

SELECT MODERN CONSTITUTIONS

BY
N. R. SUBBA AYYAR, M.A.

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PREFACE

THE aim of this book is to deal compendiously with the frame-work and the actual working of the most important Constitutions of the world. Four Unitary States, Great Britain, France, the Union of South Africa and the Irish Free State, and six Federal ones, the United States of America, the Dominion of Canada, the Confederation of Switzerland, the Commonwealth of Australia, the German Reich and the Union of Socialist Soviet Republics have been selected for study.

Relatively large space has been given to Great Britain, the United States and Switzerland. The British Parliament is the pioneer and pattern of all modern representative institutions; its composition, its methods of work and rules of procedure have been copied by most legislatures of the world. Likewise the United States is the parent of all Federal Governments and the ideas underlying its institutions have inspired the framers of many a modern Constitution. As regards Switzerland, its Constitution has been the theme of universal praise both for the unique legislative and executive machinery provided under it and for its eminent success in actual practice.

India has been omitted. Important constitutional changes are impending and any detailed study of the

present transitional constitution would soon become out of date. With regard to Italy, its Constitution is now in a state of suspended animation, and whatever may be the future of the dictatorship of the Duce, this much is certain; the Constitution may not be revived in anything like its old form. Though a similar fate seems to have overtaken the German Reich with Herr Hitler as its supreme ruler, the Weimar Constitution deserves to be carefully studied for some of its novel features and institutions. This is the reason for the omission of Italy and the inclusion of Germany.

Obligations have been acknowledged in the book. I must however apologise for any inadvertent omissions to acknowledge as some chapters have been written from lecture notes necessarily made at odd moments.

A select bibliography has been added to serve as a guide for further study and as a measure of my debt.

September 1934.

N. R. S.

The new Constitutions of Soviet Russia and India have been included in this edition.

September 1937.

N. R. S.

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SELECT MODERN CONSTITUTIONS

CHAPTER I

CONSTITUTIONS CLASSIFIED

THE Constitution of a State may be defined as the body of rules and principles which govern the distribution and the exercise of sovereign power. It explains not only the structure of government, but also how the powers of the supreme government, the rights of the governed and the relations between the two are adjusted.

One of the earliest attempts at the classification of constitutions is that of Aristotle. Aristotle's classification He classifies the forms of government on a two-fold basis, numerical and ethical. The supreme power may be vested in one person or in the few or in the many. It may be exercised in the selfish interests of the ruler or for the benefit of the governed. The numerical principle must therefore be corrected by an ethical standard. The benevolent rule of an individual is Monarchy, and the selfish rule of a person is Tyranny. Aristocracy is the rule of the few in the best interests of the State while Oligarchy is the rule of a minority for their selfish ends. Similarly the unselfish rule of the masses is a

'Polity' (constitutional democracy), while the arbitrary rule of the many is 'Democracy' (ochlocracy or mob-rule). Thus we arrive at three normal forms of government, Monarchy, Aristocracy, Polity, and three perverted or corrupt forms, Tyranny, Oligarchy and Democracy.

Aristotle's classification has had a great vogue and provided the historical basis for many
 Its inadequacy a later classification. Nevertheless it is inadequate for modern forms of government, and misleading when applied to existing political conditions. Great Britain and Afghanistan are monarchies from the point of view of mere titular sovereignty, but if the aspect of real power is considered, one is a veiled republic and the other a tempered despotism. Again, to classify France and the United States under Democracy is to miss the most important distinction between the two constitutions. In fact, the terms Monarchy and Democracy as applied to modern constitutions tell us nothing distinctive about them. Other bases of classification must therefore be found.

Modern constitutions are frequently divided into written and unwritten. A written
 Other bases of classification constitution is one in which the principles and rules affecting the distribution and exercise of the sovereign power are contained in a single legal instrument
 Written and Unwritten or in a number of fundamental laws. All modern constitutions belong to this class save one. The exception is Great Britain

whose constitution being based on customs, conventions, and usages is said to be an unwritten one. But this distinction is both illusory and unsatisfactory. No constitution is wholly unwritten. In Great Britain certain written documents such as Magna Carta, the Bill of Rights, the Act of Settlement and the Parliament Act of 1911 form the very basis of the constitution. While with regard to the United States which has the most completely written constitution, conventions have no less a binding force than any article of the written instrument. For example, the constitution sets no limit to the re-election of a person to the Presidency, but convention has limited it to one term. Again the article in the constitution which lays down the procedure for the election of the President has been in practice so completely altered that it runs counter to the will of the Fathers of the constitution. The distinction is false as no constitution is entirely unwritten or entirely enacted.

A more satisfactory basis of classification is the legal form of the constitution, whether it is Simple or Complex, Unitary or Federal. In the Simple or Unitary State one Parliament or Government possesses full authority, legislative and executive, over the whole territory, while in the Federal or Composite State the authority is shared between the central Government and the local States on definite principles and conditions which neither may contravene. In other words, the constitution of a Federal State is a treaty of special

sanctity between the federal Government and the federating units. Great Britain, France, South Africa and the Irish Free State are Unitary States, while the United States, Switzerland, Australia, Canada, Germany and Russia are Federal States.

A third principle of division relates to the character of the constitution itself, rigid or flexible. A rigid constitution is one which cannot be altered or amended by ordinary legislation, but only by some extraordinary machinery or by a special process. A flexible constitution is one in which alteration or amendment can be easily effected by the ordinary law-making body, there being no distinction between "constituent" and ordinary laws. In Great Britain, for example, Parliament is supreme and the same legislative procedure is followed whether a bill pertains to the adulteration of food or to the abolition of the House of Lords. Its constitution is therefore extremely flexible. But in the United States the federal legislature has no "constituent" powers and the constitution cannot be amended without special machinery being set in motion. It therefore stands at the opposite pole to England.

But this distinction is one of degree rather than of kind. It is erroneously thought that all written constitutions are rigid. In Switzerland the differences in machinery and procedure between passing constitutional amendments and enacting ordinary laws are comparatively slight, while in France the special process of legislation laid down in the written instrument is not

difficult or elaborate, the two Chambers having to meet in joint session and pass the amendment by an absolute majority. Thus the constitutions of France and Switzerland, though written and technically rigid, are more allied to the constitution of England than to that of the United States. Although the contrast between the two types is highly important, the creation of intermediate forms has made it less exact as a basis of classification. The later constitutions and the more recent practice have tended to obscure the distinction.¹

The most important basis of classification for modern governments is however the position of the Executive and its relation to the Legislature. In countries like England and France, the executive is generally chosen from among the members of the legislature and is responsible to it, being virtually appointed and dismissed by it. This type is called Parliamentary Executive or cabinet government. In the United States on the other hand the executive is not appointed by the legislature and is independent of it as regards tenure and powers. It has therefore been called Non-Parliamentary or Fixed executive (also loosely called the Presidential executive). The case of Switzerland is peculiar. The Swiss Federal Executive is not elected from among the members of the legislature only and may not be dismissed by it. Though for this reason it must be classified under Non-Parliamen-

¹ Cf. Lowell, *The Government of England* (New edn.) Vol. I, p. 6.

tary Executive, yet the connection between it and the legislature is as close as in countries with a Parliamentary Executive in the matter of drafting bills and of its joining in the debates of both branches of the Legislature. It may be called a Semi-Parliamentary Executive.¹

The chief constitutions of the world would thus fall into three main divisions according as they are Unitary or Federal, Rigid or Flexible, Parliamentary or Non-Parliamentary. Obviously a 'cross' classification would also be needed. For instance, though the United States and Australia have federalism and rigidity in common, their executives are of a different type. Nevertheless the suggested categories help us to classify modern constitutions with some approach to scientific accuracy and with some regard to current constitutional practice.

Summary of classification of the chief constitutions

England	Unitary, Flexible, (unwritten) and Parliamentary.
France	Unitary, Rigid, (written) Parliamentary.
South Africa	Unitary, Flexible, (written) Parliamentary.
Irish Free State	Unitary, Flexible, (written) Parliamentary.
United States	Federal, Rigid, (written) Non-Parliamentary.
Switzerland	Federal, Rigid, (written) Semi-Parliamentary.
Canada	Federal, Rigid, (written) Parliamentary.
Australia	Federal, Rigid, (written) Parliamentary.
Germany	Federal, Rigid, (written) Parliamentary.
Russia	Federal, Rigid, (written) Parliamentary.

¹ See Dicey, *The Law of the Constitution* (8th edition) p. 520.

CHAPTER II

THE STRUCTURE OF GOVERNMENT

EVERY modern government has to perform a large number of functions which may be divided into three heads, legislative, executive and judicial. Correspondingly there are three organs of government. The making of laws or the laying down of rules is usually done by a parliament or Constitutional Convention and is reckoned as the most important function.

The carrying out of the laws and rules of the legislature is the function of the executive which also enforces the orders of the courts and generally administers the business of the State. This executive function though apparently secondary to the legislative really overshadows it. It is with the executive that the individual citizen is in daily contact. It is the executive that commands the organised physical forces of the country. Even in the matter of the execution of laws, it has wide discretionary powers. Finally, it swamps by its very numbers the other two organs of government.

The judicial function lies in the interpretation of laws and their application to specific cases and is discharged by the Judiciary, the courts and the judges. The importance to the ordinary citizen of the judicial

organisation of the State cannot be overestimated. Sidgwick remarks, "The importance of the judiciary in political construction is rather profound than prominent. On the one hand, in popular discussion of forms and organs of Government, the judicial organ often drops out of sight; on the other hand, in determining a nation's rank in political civilisation, no test is more decisive than the degree in which justice, as defined by the law, is actually realised in its judicial administration, both as between one private citizen and another and as between private citizens and members of the government".¹

The functions of government being thus three-fold, legislative, executive and judicial, they should be performed by three different bodies or persons. Each body should be limited to its own sphere of action, and within that sphere should be independent and supreme. It was thought by the political writers of the eighteenth century that it was under a system of such clear-cut Separation of Powers that public liberty was possible. This is "The Theory of the Separation of Powers."

It is very definitely stated by Montesquieu in his "*Esprit des Lois*" (*The Spirit of Laws* 1748). He says, "If the Legislative and the Executive powers are united in the same person or in the same body of persons, there is no liberty because of the danger that the same monarch or the same senate may make

¹ *Elements of Politics* p. 481.

tyrannical laws and execute them tyrannically. Nor again is there any liberty if the judicial power is not separated from the legislative and the executive. If it were joined to the legislative, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the law-maker. If it were joined to the executive power, the judge would have the force of an oppressor." Nearly twenty years later a great English jurist expressed a similar opinion. Blackstone in his "*Commentaries on the Laws of England*" wrote, "In all tyrannical governments the supreme majesty or the right both of making and enforcing laws is vested in the same man, or one and the same body of men, and when these two powers are united together, there is no public liberty."

This view exercised a profound influence on constitution-making both in Europe and in America in the 18th century. The Fathers of the United States constitution were definitely influenced by it. In one of the brilliant essays of the '*Federalist*', Madison wrote, "The accumulation of powers legislative, executive and judicial, in the same hands, whether of a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."¹ Alone among modern constitutions, the United States has given an institutional form to this theory. The President is not allowed to sit in the legislature. Congress is set off against the executive, while the judiciary acts as the guardian of the constitu-

¹ *The Federalist* (Everyman's Library), p. 245.

tion. However in the course of the 19th century the theory became discredited, and the conspicuous success of the British constitution whose outstanding feature has been the fusion and concentration of powers rather than their separation has disproved the validity of the doctrine that any such fusion may be a danger to public liberty.

Criticism of the Theory There is no doubt that this theory contains an important truth. In every State the distinction between the three powers is necessary for the safeguarding of the rights of citizens, and their separation may act as a check upon the undue expansion of each authority's allotted sphere. The independence of the judiciary from the executive is essential to freedom; else the latter would have absolute supremacy in the state. But this should not mean the equal balance of powers because the executive and the judiciary should always be limited by the declared will of the legislature.¹

The chief reason why the legislature may not perform the duties of the executive or of the judiciary is the loss of efficiency and not any danger to liberty. A modern representative assembly is ill-adapted for the specialised task of the executive, and utterly unfitted to do the work of the judiciary which requires an impartial frame of mind, trained judgment and absence of political bias.

Further, such hard and fast separation is not possible in practice. It is most difficult to define with

¹ See Laski, *A Grammar of Politics* (2nd edition) p. 297 *et seq.*

any exactitude the area of each of the three authorities. Legislatures often exercise executive powers; the United States Senate ratifies the treaties and appointments made by the President. They also perform certain judicial duties; the House of Lords in England is the appellate court of the realm. In most countries the executive bodies possess extensive rule-making powers, while the judiciary lays down the law by its interpretation of the existing statutes and sometimes as in the United States even decides on the constitutionality of the acts of the other two branches of government.

There is also the possibility of friction and deadlock between the head of the executive and the majority in the legislature. This difficulty has been overcome in practice in the United States by the party system. Though it does not form part of the legal machinery of the Government, it has served as a bond of union between the legislature and the heads of the executive and thus secured the harmonious working of the administrative machinery. To quote the words of Laski, "This separation of functions need not imply, though it has been taken to imply, a complete separation of personnel. Montesquieu's mistaken view of the relation between executive and legislature in England, consecrated as it was by Blackstone, led to the theory that no bridges ought to be built between the organs which represent these various powers. But...the execution of any order involves the assistance of all ultimate authorities in the State; and the attempt, as in

the American Constitution, rigidly to separate the three powers, has only meant the building of an extra-constitutional relationship between them. The use of the patronage on the one hand, and the peculiar structure of parties on the other, has effected by means open to serious question a conjunction between executive and legislature which needs, in any case, to be made. Much the best method of obtaining it is to make the executive, as in England and France, a committee of the legislature."¹

Lastly, the theory of the Separation of Powers is in politics what Newton's theory of the universe has been in dynamics. According to Newton, every planet moves in its own orbit and is kept in its place by the attraction of other bodies that swing with equal order and precision. Thus by checks and balances are symmetry and perfect adjustment of the universe maintained.

But government is a living thing, not a machine; it is a body of men, not of blind forces. It falls not under the mechanical theory of Newton, but under that of Darwin, the theory of organic life. The functions are differentiated, but the purpose is common; and co-operation between the organs is therefore indispensable. "No living thing can have its organs off-set against each other as checks, and live... Living political constitutions must be Darwinian in structure and in practice."²

¹ *A Grammar of Politics* p. 298.

² Wilson, *Constitutional Government in the United States* p. 56.

CHAPTER III

GREAT BRITAIN

Characteristics of the Constitution

The British constitution is the oldest among modern constitutions. It is the parent of all the democratic constitutions of the world and this fact is expressed in the proverbial phrase 'England is the mother of parliaments.' In one important respect however it differs from all other constitutions. A distinguished French political philosopher, De Tocqueville remarked with some impatience, "In England, the Constitution....there is no such thing." This is no doubt true, in the sense that a compact, complete and easily accessible constitution cannot be found in Great Britain. There are no 'Fundamental' laws creating the organs of government, distributing the powers and fixing the relationship between them and defining the rights and immunities of citizens. What is called the constitution of Great Britain is "a mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of government, together with a certain number

Elements of the
British Constitu-
tion

of statutes some, of them containing matters of petty detail, others relating to private just as much as to public law, nearly all of them presupposing and mixed up with precedents and customs, and all of them covered

with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable or at any rate quite different in their working from what they really are.”¹ In other words, it rests partly on Statute laws and very largely on Common Law and coventions. Among the Statute Laws may be mentioned the Habeus Corpus Act, Act of Settlement, the various Franchise Acts, the Parliament Act of 1911 and the Representation of the People Act of 1918. But the Common Law is the fundamental source. It is the creation of the judges who by their interpretation and decisions have evolved a coherent system of law from the mass of varying and uncertain customs. The royal prerogative, the privileges, the judicial and the legislative power of Parliament itself rest on it. But even a knowledge of both the Statute and the Common Law will not help one to understand the true character of British political institutions. Such characteristic features as the Party System of Government, the Cabinet, the dependence of the Executive on the Legislature, the unique position of the Prime Minister have all been the result of tacit understandings.

¹ Bryce, *Studies in History and Jurisprudence* Vol. I, p. 134.

The British Constitution is the sole example of extreme flexibility. It is built upon the unlimited sovereignty of Parliament. There is no distinction between "constitutional" and ordinary laws. It possesses no separate machinery for constitutional amendment, nor does it lay down any special procedure for the enactment of statutes of constitutional import. It undergoes perpetual change to suit the political needs of the nation at different periods. It can be stretched or bent without breaking. For instance, the surrender of the right once claimed by the House of Lords to alter money bills was the result of environmental necessity. But the convention is now well established that no proposal to reform any laws of fundamental national interest shall be made by the Government of the day, unless it had been placed as a specific issue before the electors at a general election.

Another noteworthy feature of the British constitution is its unbroken continuity. It is not a work of deliberate art, but a 'somewhat rambling structure' lacking symmetry and coherence. It represents a long and slow evolution with a minimum of conscious efforts at expression. Freeman in his *'English Constitution'* calls attention to this aspect of the British constitution, though with some over-emphasis. "At no moment has the tie between the present and the past been wholly rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory. Each step in our growth has been the natural consequence of some

earlier step; each change in our Law and Constitution has been not the bringing in of anything wholly new, but the development and improvement of something that was already old." It is this continuity, this gradual adaptation to the environment that accounts for its marvellous vitality.

A fourth distinguishing characteristic of the British constitution is the Rule of Law. Nearly every other modern constitution contains a Table of Rights embodying the legal rights of the citizen. It is believed that such a solemn formal statement of rights ensures the enjoyment of maximum individual liberty. The British constitution however knows no such formal declaration of rights. The ordinary law provides the Britisher with more and surer legal remedies than are to be found in other countries. Dicey, in his "*Law of the Constitution*," emphasises this feature of the British constitution. Every citizen whatever be his rank is subject to the ordinary law of the country, as administered by the ordinary courts of justice. "Every official from the Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen." In France on the other hand there are special administrative courts in which officials are tried in accordance with special rules known as *droit administratif* (Administrative Law). Further no man is punishable in Great Britain except for a distinct breach of law established by good proof before the ordinary courts of the land.

Another essential principle of the British constitution which has been copied by most countries in the world is the concentration of responsibility for both legislation and administration in the hands of the executive body or the "Government". This intimate relation between, and the interdependence of, the executive and the legislature is, according to Ilbert, the key-note of the British constitution.¹ There has been no doubt a specialisation of functions, but no separation of powers as in the constitution of the United States. Unity of will has not been dissolved in a trinity of powers² and it is represented by the King-in-Parliament.

Lastly, in the British constitution there is a great divergence between theory and practice. Anomalies and inconsistencies abound. In theory the monarch is absolute, but in actual fact he is a mere shadow. The cabinet is said to be the executive, but in practice it monopolises the legislative function. The working constitution is different from its paper description; the living reality contradicts the literary theory, so much so that Bagehot's brilliant and penetrating analysis made about seventy years ago has now become obsolete in most important respects. This unreality and elusiveness render the task of portrayal difficult.

¹ Preface to Redlich "*The Procedure of the House of Commons*". Vol. I, p. xii.

² See Pollard, "*The Evolution of Parliament*", p. 257.

CHAPTER IV

THE EXECUTIVE I: THE CROWN

IN the British constitution supreme executive power is vested in the Crown, an hereditary institution. In legal theory it is the source of all authority. It is the fountain of honour and justice, the supreme head of the church, the commander-in-chief of the army and the navy, the owner of all land. All public officials are its servants. Treaties with foreign powers are made in its name. Rulers of dependencies and colonies and the ambassadors at the different courts are its representatives and spokesmen. Parliament meets only at its will and may be prorogued or dissolved by it. Its assent is necessary to the measures passed by Parliament. Technically all statutes are the work of the King-in-Parliament. In short there is no limit to the power of the Crown except that it cannot make or alter laws or levy taxes without the consent of Parliament and that it must exercise its power according to the law.

Between the wide legal powers of the Crown and actual practice there is great divergence. The king performs all these vast functions on the advice of his ministers who are in law responsible to Parliament for every public act. "There is not a moment in the King's life, from his

accession to his demise, during which there is not some one responsible to Parliament for his public conduct, and there can be no exercise of the Crown's authority for which it must not find some minister willing to make himself responsible." The King can therefore do no wrong legally and politically. He reigns, but does not govern; and the whole of the royal prerogative has been annexed by the ministers.

Though legally unhampered in the choice of his ministers the King is bound to send for the recognised leader of the majority party in the House of Commons and appoint his nominees. Even the speech from the throne is the composition of the Prime Minister and merely put into his hands to be read. Peers are created and honours conferred in accordance with the advice of the cabinet. Justice is administered by judges who are appointed by the Lord Chancellor, a cabinet minister and are dismissible only upon an address from both Houses of Parliament. Administration is carried on by the Civil Service officials under the control and responsibility of the ministers in charge of the several departments.

But strange to say the influence of the Crown has been steadily increasing. It is essential that it should be furnished with reports of cabinet meetings and of the plan of action and measures of the Government. Its right to be consulted, to encourage, to warn has been sagaciously exercised by the Sovereign during the last one hundred years. Both British official correspond-

Influence of the
Crown

ence and recent political biographies bear witness to the permeating influence of the monarch not only in foreign affairs but in delicate domestic concerns too. The Crown is the visible unity of the nation. It renders a signal service as a social and ceremonial agency. It is also the centre and symbol of the unity of the British Commonwealth.¹ Its position to-day has been discerningly summarised in the following words of Finer, "On the whole, however, the wheels of politics move without royal intervention, and the Crown is now the supreme ornament of a democratic edifice, the high and majestic symbol to which people at home, in India and the Colonies respond with an emotion of loyalty and obedience, and the picturesque and dynastic link between the units of the British Commonwealth of Nations."²

¹ See the admirable remarks of Balfour in his Introduction to Bagehot's *'English Constitution'* (World's Classics).

² *Europa Year Book*, 1928, p. 357.

CHAPTER V.¹

THE EXECUTIVE II: THE MINISTRY AND THE CABINET

IF the ornamental or the dignified part of the executive is represented by the Crown, the operative or the effective part of it consists of two elements, a changing element, the Ministry and a permanent element, the Civil Service which together may be called by the familiar but expressive term, "the Government." The power of the Government, while it commands a majority in the House of Commons, is practically unlimited and uncontrolled. It wields all the legal powers of the Crown and of the House of Commons. Even the judges are not independent of it. If they give a decision unpalatable to it, it may have it reversed by an act of the legislature. These vast powers of the Government fall under four heads.

All the important officials such as Viceroys and
Governors, Ambassadors and Consuls,
I. Patronage Bishops and Deans, the higher officials

¹ In this Chapter and the next, I follow in the main Ramsay Muir. His book "*How Britain is Governed*" treats the subject from the realist's point of view and is more in accord with actual constitutional practice than any other work.

of the Army, the Navy and the Air Force, Judges and Magistrates are appointed either by the Prime Minister as the head of the Government or by one of the cabinet ministers; and Parliament has virtually no control over the Government.

Administration is the most important of the functions of the Government and covers a very wide field. Maintenance of law and order, provision for the sick and the infirm, direction of such national industries as coal-mining and transport, education of every grade and insurance of two-thirds of the population, housing and sometimes determination of wages—in one word, provision of all services vital to the life of a modern state comes within its ambit. Again the work of organising and training the armed forces of the nation is wholly in its hands. The conduct of foreign relations is entirely its concern. Even with regard to the conclusion of treaties submission to Parliament is more an act of expediency than a requirement of law, the royal prerogative in this respect being kept intact in the hands of the Government.

Parliament is ordinarily supposed to exercise the legislative function. But in practice the private member has little chance of initiating laws and the Government alone is regarded as responsible for drafting and introducing all important legislation. Further the Departments of administration enjoy large powers of delegated legislation which will be dealt with in a later chapter.

The House of Commons is said to hold the purse strings. But it is the Government which proposes how the revenue must be raised and the expenditure adjusted. Since according to rules of financial practice the House cannot propose a new tax or an increase in expenditure proposed by the Government, its control amounts to little. The Government always considers any serious alteration in its Budget proposals as a matter of no confidence, effectively shuts out scrutiny and discussion, and by its solid majority bends the House to its decision.

We shall now turn our attention to the actual institutions that are concerned with the exercise of these vast powers of the Government.

In law and theory the Privy Council is the sole advisory body of the Crown. It has had an unbroken history from very ancient times. The Anglo-Saxon Witenagemot became the King's Council in the Norman period. In the Tudor times it was all powerful. But under the Stuarts it became too unwieldy in size to be useful for administrative purposes. A few came to be selected to advise the King and this led to the rise of the Cabinet, an inner circle of the older and larger body. Even now a cabinet minister wields authority, and is known to the law, only as a privy councillor.

In fact the Privy Council is now a formal and ceremonial body. It meets as a whole only to proclaim a new Sovereign. Its consent is necessary for several

public measures. But this is not of much importance since the numerous Orders in Council are passed formally and without discussion and since three councillors are enough to constitute a quorum, though a larger number is normally summoned.

All privy councillors are appointed by a declaration of the King in Council and are required to take besides the oath of allegiance an oath of fidelity and secrecy. Their number is not fixed. The council now consists of about three hundred persons who fall into three groups; (a) all cabinet ministers, present and past, the two Archbishops and the Bishop of London; (b) officials who have held high administrative posts at home and abroad, and a certain number of the highest judges and ex-judges; (c) a large number of persons eminent for their political, literary, scientific, military or other services. The official head is the Lord President of the Council, a cabinet minister of the highest dignity. The members have a right to be addressed as Right Honourable.

The Ministry is composed of members of both Houses of Parliament who are appointed to various political offices on the advice of the Prime Minister. A few of them are engaged in laying down the policy of the Government and in administering the affairs of the departments under their charge. Others there are who occupy less important executive places and who do not possess the advisory function. The former class is called the Cabinet.

Though the pivot of the British constitution, the cabinet is not known to the law. A
The Cabinet cabinet member derives his power from the fact of his being appointed a minister and advises the King in the capacity of a member of the Privy Council.

The composition of the cabinet depends upon
Composition circumstances. The following ministers have invariably a seat in it: The Lord Chancellor, the First Lord of the Treasury (the office held by the Prime Minister), the Chancellor of the Exchequer, the eight Secretaries of State, the First Lord of the Admiralty, the Lord President of the Privy Council and the Lord Privy Seal. The inclusion of other ministers is left to the discretion of the Prime Minister. The Presidents of the Board of Trade and of the Board of Education have been usually included.

The number of cabinet ministers had been till lately increasing steadily. In the Gladstone-Disraeli period it was 14. By 1920 it had risen to 21. To-day it is 19. This increase is mainly due to the expansion of state activities giving rise to new departments of administration. The effect has been unwieldiness. Quick dispatch of work has been possible only with the differentiation of an inner circle as during the war.

The Prime Minister is appointed by the King whose choice however is limited to the leader of the party that commands the majority in the House of Commons. The other members of the cabinet are selected by the Premier after consultation with the influential members

of the party. One of the Secretaries of State should be a member of the House of Lords. The Lord Privy Seal, the Lord Chancellor, and the Lord President of the Council are invariably peers. Beyond this there is no legal bar to the other members being chosen from the Lower House. A department whose chief sits in the House of Lords is represented in the House of Commons by an under-secretary and *vice-versa*.

One of the essential features of the cabinet is its dependence on the legislature. All its members must have a seat in Parliament. It is in one sense a Committee of Parliament, rather of one party in Parliament. It is, in Bagehot's words, the hyphen that joins, the buckle that fastens the executive and legislative departments together. A second feature is its political homogeneity or solidarity. The ministers belong to the same party and stand or fall together. Coalitions have been hardly a success, while National Governments drawn from all parties represent a passing phase and are sure to lose their national character as soon as the emergency which gives rise to them disappears. A cabinet chosen from a single party works without friction. A third important feature of the cabinet is the collective responsibility of its members. While all ministers are severally responsible for the administration of their departments, they are deemed to be collectively responsible for the policy of the Government. "The cabinet is a unit—a unit as regards the Sovereign and a unit as regards the Legislature. Its views are laid before the Sovereign and before Parlia-

ment, as if they were the views of one man. It gives its advice as a single whole, both in the royal closet, and in the hereditary, or the representative, chamber. . . The first mark of the Cabinet is united and indivisible responsibility."¹ Even if a particular minister's acts of administration are disapproved, it may be difficult to bring him to book as the cabinet will take the responsibility on its shoulders. Fourthly, the King does not preside over its meetings. The Prime Minister is the chairman of the cabinet council, reports to the Sovereign its proceedings and places its views before him. He is 'the keystone of the Cabinet arch'. As the leader of the Legislature and the chairman of the cabinet council, his authority is unique. The phrase 'First among equals' once applied to him, no longer expresses his great position with regard to the other ministers. He is in fact the real head of the State, and even the President of the United States cannot boast of such a plenitude of power. So long as his party commands the majority in the House of Commons his autocracy is unassailable.² Fifthly, the cabinet resigns on the passing of a vote of want of confidence for some specific reason or a general vote of want of confidence in the ministry. It is also bound to resign if it is made clear that it has lost the support of Parliament by being defeated on any propo-

¹ Morley, *Walpole*, p. 155. But recently there has been a departure from these principles, as during the present National Government Liberal Ministers were given freedom to speak against Government's Tariff policy.

² See Ostrogorski, *Democracy and the Organisation of Political Parties*, Vol. I, p. 607.

sal of vital importance or by the passing of a bill in opposition to the declared views of the ministers. It may appeal to the country, if it is sanguine of popular support, but must resign in case of adverse election results. Lastly, the proceedings of the cabinet meeting are not published. It is a grave breach of discipline for a minister to divulge anything about the business transacted at a cabinet meeting. Only recently has a Secretariat been appointed to record and transmit to the Departments the decisions of the cabinet and its committees.

The most important function of the cabinet is the
Functions determination of national policy and
 the solving of all vital problems of
government. It assumes responsibility for the administration of each Department and for the co-ordination of the work of all the ministers. It has the initiative in legislation and directs all legislative work in Parliament. It prepares the annual budget. It exercises all patronage. It fixes the programme and the time-table of the House of Commons. The cabinet is thus an omnipotent council and has overshadowed the House of Commons which was in Gladstone's time "the centre of our system, the solar orb round which the other bodies revolve." Cabinet dictatorship is far more absolute to-day than it was thirty years ago when Sidney Low drew attention to it in his book, "*The Governance of England*."¹

¹ Cf. also the instructive remarks of Ostrogorski, *op. cit.* Vol. II, p. 717.

Among the heads of Departments, the most historic and dignified is the Lord of Chancellor. He is responsible for the appointment of judges and magistrates. He is the head of the judiciary and of the Law Department. He presides over the House of Lords, and is also the chief adviser to Government and is assisted by the Attorney-General and the Solicitor-General. Next come the Lord Privy Seal and the Lord President of the Council. These two offices are now held by one minister.

The Departments of Foreign Affairs, Home, Scotland, Colonies, Dominions, India, War and Air are presided over by Secretaries of State. The Treasury is in Commission, the Premier being the First Lord; but its real head is the Chancellor of the Exchequer who ranks next to the Prime Minister in importance. The Admiralty is a Board with a Civilian member of the cabinet at its head as the First Lord and four others to advise him. Other important Departments are Trade, Agriculture, Education, Health, Labour and Public Works.

CHAPTER VI

THE EXECUTIVE III: THE PERMANENT CIVIL SERVICE

MEMBERS of the ministry being all party leaders and at the same time political heads are necessarily birds of passage through the departments over which they preside for the time being. Executive government in England is therefore apparently amateur government. But the business of the amateur minister is simply to see that his department is properly worked. He gives the driving force and for the rest is helped by the Permanent Civil Service whose members keep him well posted up in precedents, procedure and similar matters. This system of co-operation between the changing ministries and the permanent officials seems best fitted to make for stability and progress. The Permanent Civil Service includes a host of salaried officials of the Government, great and small, from the Permanent Under-Secretary with a salary of 2000£ a year to the Assistant Clerk on 100£ per annum. Ordinarily all the officials are appointed on the results of an open competitive examination held by a non-political body, the Civil Service Commissioners. Though their legal tenure is at the pleasure of the Crown, in practice they are not removable save for gross misconduct. The tenure is therefore practically permanent, no matter which party,

may win the elections and come to power. Officials abstain strictly from party politics and their loyalty and obedience to ministers of opposite political faith have struck the most competent foreign observers as an admirable feature of the British system of administration.

The Civil Service represents the professional or the expert element in 'the Government.' It has no independent authority and works always in the background. But its expert knowledge and permanent tenure have enabled it to become the most potent element in administration. The English Civil Servants have been therefore aptly described as men who have exchanged public fame for practical power. Their influence has increased so much of late that the Lord Chief Justice of England has characterised it as the New Despotism.

In administration, the Civil Service officials are supposed merely to give effect to the decision of the minister in charge. But the latter has no special knowledge of the intricate work of his department. His time is largely taken up by attendance at Cabinet meetings and in Parliament and also by public engagements and social calls. In the circumstances he must be really a super-man to take upon himself the burden of deciding the hundred and one knotty questions that arise in the the course of administration without guidance from the Permanent Officials. What he actually does is to accept their views in ninety nine cases out of a hundred.

The minister's answers to questions in Parliament are supplied by the office, his speeches in Parliament and in the country are based on facts and arguments supplied by his department; when he receives a deputation, an expert official is at his elbow to meet objections with facts and figures. To the public the minister appears to be an epitome of knowledge, but he is really helpless without his permanent officials in the matter of Departmental administration. As Keith observes, though nominally the control of policy appertains to the minister, in many cases the suggestions which are adopted as the policy of the Government really emanate from Civil Servants.¹

In the field of legislation too, the departmental officials exercise no small influence. Modern parliamentary statutes indicate only the general lines and it is left to the departments concerned to give substance to the legislative skeleton by the issue of administrative regulations. Not only has this power of subordinate legislation assumed dangerous proportions, but many of the statutes contain clauses empowering the Minister (in practice, the Permanent Officials) to issue orders or regulations which shall have the force of law. This excludes an appeal to the Courts, as no judge can question the validity of a statute. An Act of Parliament frequently contains a provision that a question in dispute shall be referred to the Minister as arbitrator and that his decision shall be "final and conclusive", words which again bar an appeal to the Courts. This

¹ Keith, A.B. *British Constitutional Law*, p. 62.

remarkable development of Bureaucratic sovereignty has been vigorously attacked by Lord Hewart in his book, "The New Despotism." He declares that, though the system of delegation of legislative power is within certain limits necessary, powers so delegated should not be placed beyond legal scrutiny.

Some are inclined to call the Permanent Civil Service a Bureaucracy. The word 'Bureaucracy' strictly means government by professional administrators and suggests the exercise of a large degree of independent power by an official class. In this literal sense it cannot apply to the Permanent Civil Service in England, as it is merely a body of expert servants chosen by open competition and working under the control of the political ministers.

But there is no doubt, as has been shown above, that at the present day there is a strong and growing element of uncontrolled officialism. Under cover of ministerial responsibility it has thriven and grown to vast proportions. The policy of the minister is really the policy of his permanent officials. In his name they wield a large amount of irresponsible power, in the result that the Permanent Civil Service has not been free from the defects of a true bureaucratic system, namely, undue reverence for its own methods and traditions, multiplication of routine and red-tape and 'departmentalism'.

CHAPTER VII

THE LEGISLATURE I: THE HOUSE OF LORDS

THE legislative organ in England is Parliament, or more correctly "the king in Parliament". It is the most venerable and the most powerful of all legislative assemblies in the world. Attention must be drawn to two most important features. First, Parliament is legally all powerful. In the ludicrous words of a foreign observer, it can do everything but make a woman a man and a man a woman. "It can make and unmake any and every law, change the form of government or the succession to the Crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory, it is the nation, being the historical successor of the folk-moot of our Teutonic forefathers. But practically and legally it is today the only and sufficient depository of the authority of the nation; and it is therefore, within the sphere of law, irresponsible and omnipotent,"¹ Secondly, Parliament is bicameral, the evolution of this form being the result of a series of accidents. The two chambers

¹ Bryce, *The American Commonwealth* (New edition, 1917), Vol. I, p. 35.

are known as the House of Lords and the House of Commons. The former is also commonly spoken of as the Upper House. But the continental practice of calling it as the second chamber to distinguish it from the elected popular house, the first chamber, will be a true index of their relative importance.

Parliament is summoned by the writ of the Crown,
How summoned issued on the advice of the Privy Council at least twenty days prior to its assembling. The annual session lasted before 1914 only from February to August, but now Parliament sits all the year round, except for short intervals or recess. At the end of a session, it is prorogued by the Crown, and all Bills, not passed during the session, lapse. Either House may adjourn its sittings of its own accord for any period. Parliament may be dissolved by the Crown generally by proclamation during the recess, or by efflux of time, five years being its statutory duration.
Duration

The House of Lords is composed of Lords, Temporal and Spiritual, of the United Kingdom, representative peers of Scotland and Ireland, and Law Lords. The total strength is about 720. The majority are hereditary peers. The Spiritual Lords include the two Archbishops and twenty four Bishops. Scotland sends sixteen representative peers for the duration of Parliament. There are twenty-eight Irish peers elected for life who occupy an anomalous position now that the Irish
Composition

Free State has been established. Besides there are seven Lords of Appeal in Ordinary, who are appointed as peers for life.

To sit in the House, a peer should have attained the age of twenty one, should not be an alien, or bankrupt or under sentence of felony. Women inheriting peerages are not allowed to sit. On the other hand an heir succeeding to a peerage cannot renounce his membership of the House of Lords. The Crown has the right to create peers at its pleasure.

The House of Lords is unique among second chambers in that it is the only hereditary chamber, and the largest in the world. It has been the target of attack on account of its composition and has been considered as an anachronism in a democratic constitution. Proposals have been made time and again to reform it so as to bring it into conformity with the democratic ideal, the most recent of them being the Bill brought forward by Lord Salisbury, the first reading of which was voted in December 1933.

Until 1911, the House claimed to be a co-ordinate chamber with the Commons. But the
Powers Parliament Act of 1911 limited its powers to a large extent and reduced it to a secondary position in the field of both finance and ordinary legislation.

Money bills may originate only in the House of
Finance Commons. After being passed in the lower chamber, they are sent up, with the certificate of the Speaker, to the Lords within

at least one month before the end of the session. If they are not passed there within one month, they receive royal assent as a matter of course, unless otherwise directed by the Commons.

In the case of ordinary legislation, the House may introduce any bill, but in practice it concerns itself with initiating only small departmental bills. Even this means the saving of a good deal of time to the House of Commons. With regard to important bills, the relation between the two houses has been defined by the Parliament Act of 1911. If a bill is thrice passed in successive sessions by the Commons, having been sent up at least a month before the end of the session, and two years have elapsed since the second reading in the first session and the final passing in the third session and if it is not accepted by the Lords, it is to be presented for royal assent, unless otherwise directed by the Commons. In other words, the House of Lords may hold up a House of Commons bill for two years at the most, after which period it shall become law. In case of disagreement there is no machinery for joint sessions.

Even the suspensive veto of two years is deemed as an irksome restraint by the advanced section in the House of Commons; for judging it from its past history, the House of Lords has been the stronghold of Conservatism and the mortality of government bills during Liberal Administrations has been phenomenally high.

The fear seems therefore to be well grounded that urgent socialistic legislation may meet with delay and temporary obstruction.

But it is an ideal chamber for deliberation. It is free from party bias and bonds. The atmosphere is calm and independent without the heat and dust of party warfare. It contains some of the best brains in the country and also men of experience and wisdom. It has been well called the "*reservoir of ministers.*" Services of men like Lord Morley who cannot on account of age stand the strain of party leadership in the Commons and of departmental administration, will be lost to the State but for the retreat which the House of Lords offers. It further enables the Prime Minister to cast his net wide when forming his cabinet and choose men who by reason of their social position, wealth and culture are peculiarly fitted to hold certain offices in preference to politicians who have risen from the rank and file and who are entirely dependent on a party majority in the constituencies. By its deliberation and criticism, it compels the first chamber to reconsider grave issues. The presence there of men of such outstanding ability and varied experience as Curzon and Milner, Reading and Halifax has invested its deliberations with real importance, though the thin attendance and the listless air even on momentous occasions discourage brilliant oratory, giving rise to the remark that it is 'the Westminster Abbey of living celebrities.'

One important function which the House of Lords does not share with the House of Commons is the judicial. The House is the Supreme Court of Appeal both in civil and criminal cases and in this capacity corrects the errors of the common Law courts of the realm; and this work is performed by a very small number of its members, the Lord Chancellor and the six Lords of Appeal in ordinary who are life peers. It is also a court of first instance in cases of impeachment, disputed claims to peerages and treason and felony committed by peers; but this part of its work is obviously of no great practical importance.

At present the strength of the House of Lords seems to lie in its weakness. Clipped of its wings and bereft of real power it is no longer a clog in the democratic machinery.* Its hoary traditions appeal to the conservative instinct of the Englishman and proposals to abolish it altogether have received little support in the country.

The presiding official is the Lord Chancellor (the Speaker). His seat is known as the Woolsack as in Elizabeth's days the sack was filled with wool. But today, he sits on an ottoman. His position in the House is not similar to that of the Speaker of the House of Commons, for as an official he is not a member of the body, and this is why his seat is not within the actual chamber. He does not regulate the debate in the chamber. If two or more peers claim precedence of

Judicial Function

Organisation and Procedure

speech, the peers themselves decide by a majority vote. Order in debate is enforced by members who address not the Chancellor but the whole House as "My Lords." The only function of the Chancellor is to put a question to vote. Members have the right to record a protest against the decision of the majority and also the right of individual access to the Crown. Other officers are the Lord Chairman of Committees, the Clerk of Parliament to keep records, the Sergeant-at-Arms who is the custodian of the mace and the Gentleman-Usher of the Black Rod to summon the House of Commons.

Ordinarily the House meets on Mondays, Thursdays and Fridays at 4-30 p.m. and on Tuesdays at 5-30. The sittings however last for barely one hour, the reasons being dearth of business and unwillingness to waste time. A full-dress debate occurs only on rare occasions. Though the quorum is only three, no division takes place unless there are thirty members present. One of the largest of the world's legislative assemblies, it is in actual working one of the smallest, since hardly forty members attend except on formal occasions and during important debates.

CHAPTER VIII

THE LEGISLATURE II: THE HOUSE OF COMMONS

To many Parliament is synonymous with the House of Commons. No other political institution has had such a wide reputation. It has been the pioneer and pattern of many a representative legislature in the world. "The House of Commons is the most remarkable public meeting in the world. Its venerable antiquity, its inspiring history, its splendid traditions, its still youthful spirit and energy, the unrivalled influence it has exercised as the model of Parliament, its inseparable connection with the vitality of the English nation, its place as the visible centre, the working motor of our Constitution, all this gives it an unique position. More than the Monarchy itself, more, far more than the Cabinet, it attracts the attention not of Englishmen alone, but of foreigners. Its debates are studied beyond the Channel and beyond the Ocean. Its proceedings are familiar to many thousands who have never set foot in Britain, and have never uttered a word in the English tongue. For a man to have attained a conspicuous station in this august assembly, to be numbered among its leaders, its trusted councillors, its favourite orators, is to be counted among the foremost figures of his age"¹. It is true that

¹ Sidney Low, *The Governance of England*, p. 55.

nowadays there has been a decline in its influence. The incidence of political power has shifted to other agents. Rival jurisdictions have arisen. But still its prestige is high, it is the bulwark of liberty and the pride of every Englishman.

The strength of the House is 615. Seventy four members represent Scottish constituencies, thirteen North Ireland, and the rest England and Wales. Each constituency sends one member on the principle of a majority vote. The distribution of the constituencies is on the basis of population, one member for every 70,000 inhabitants. The exceptions to this are the Universities which return two or more members on the principle of proportional representation by single transferable vote. Women are allowed to sit and hold office. A candidate may stand for election in any constituency. Members are paid a salary of £400 per annum with free travel privileges.

Every man or woman over the age of twenty one is entitled to vote. Persons who are registered as the occupiers of business premises of the annual value of at least £10, together with their wives are entitled to cast a second vote. University graduates have one additional vote for one or the other of the University seats. But no person may vote at a general election for more than two constituencies, for one of which there must be a residential qualification and each vote must be recorded in a different constituency. Peers, infants, bankrupts,

lunatics and idiots are disqualified for registration as voters.

. This system of single member constituencies and equal electoral districts has been attacked on various grounds. It has resulted in a serious disproportion between the votes cast for a party and its strength in the legislature. For instance, in the election of 1929 the Conservative Party polled 38 per cent of the votes and obtained 253 seats, while the Labour Party polling only 36 per cent won 288 seats and the Liberals with 23 per cent of the votes cast for them secured only 58 seats. Further when the contest in a constituency is between three candidates, the representative is in most cases chosen on a minority of votes. The system therefore has robbed the House of Commons of its representative character and made every general election a gamble. To remove these defects and make the House of Commons the true image and mirror of the nation, various proposals have been made, the most important of which is the system of proportional representation by the single transferable vote. But the question of reform of the electoral method still hangs fire.

The work of the House of Commons falls under
Functions four main categories. The first relates
to questions addressed to Ministers at
the beginning of each day's business with a view to get
information about any act or omission of the depart-
ments. This method helps to keep the administration
of the country up to the mark and to throw light on the
dark corners of public service. It is a valuable safe-

guard against arbitrary executive conduct or administration. Sometimes questions may be so framed as to draw from the Government statements of their policy or plans with regard to matters of public importance. Questions need previous notice, must relate to public business and be in the form of requests for information. The Speaker may disallow any question, and the minister too may refuse to answer. But generally speaking, all questions are answered and oral replies given to supplementary questions arising from the original ones. But an answer, however unsatisfactory, may not be followed by a debate or a vote. An aggrieved member may move after questions the adjournment of the House to discuss a matter of public importance with the permission of the Speaker and the support of at least forty members, though in practice such permission is often refused.

The question hour is quite lively in the House of Commons. But the right is liable to be abused. Often questions are asked for the purpose of self-advertisement, or they relate to unimportant details. On the whole it is felt that as a method of control over administration it is singularly ineffective nowadays.

The second group of functions is legislation. It includes (1) Public Bills (Bills affecting the whole community) introduced by either private members or by the Government, (2) Private Bills which affect the interests of a section

of the community such as the Bills promoted by Railway Companies or by Municipalities and (3) Departmental Orders and Regulations requiring the sanction of Parliament. The most important of these three classes is Public Bills sponsored by the Government. They take up nearly all the time of the House. All Bills have to pass through several stages.

Leave to introduce a Bill is usually given without opposition unless it is a very unpopular measure. There is then the First Reading, a purely formal affair after which the bill is printed and circulated to members. The next stage, the Second Reading, is the most important, as then the principles underlying the bill are subjected to a searching examination. This affords the greatest opportunity for debate which every member conversant with the subject seizes. If the bill passes the Second Reading it is referred to a Standing Committee of which there are five now, consisting normally of thirty to fifty members representing fairly the several parties in the House. Sometimes in the case of important bills, the House may order them to be committed to a Special *i.e.*, Select Committee, or Committee of the whole House or a Joint Committee with the Lords. In this, the committee stage, the measure is discussed clause by clause, the various amendments being proposed, debated, accepted or rejected. Then the Committee report the bill to the House whereupon the Third Reading takes place, during which a debate only on general principles and merely verbal amendments are

allowed. Thus every bill in the House of Commons is brought in, read, committed, reported and passed. But by the adoption of a motion 'that the bill be read a second time this day six months' (or at some other date falling beyond the limits of the session) any measure may be stifled even before the Second Reading.

The Parliament Act of 1911 gave the House of Commons absolute control over Finance. The House has three duties to perform. It has to scrutinize the estimates submitted to it by the Government and pass every separate vote. Secondly, it has to provide the necessary funds and decide what new taxes should be raised and how old ones should be adjusted. Lastly, it has to pass in review the financial position of the nation as a whole.

The Budget Estimates are prepared in consultation with the Treasury and presented before March 31 to the Commons by the Chancellor of the Exchequer. The House at once resolves itself into a Committee of Supply to discuss the *pros and cons* of every proposal. No private member can propose additional expenditure. If he feels that sufficient money has not been provided under any head, he may move a reduction of the minister's salary by a nominal sum by way of protest, and this may induce the Minister to increase the expenditure on that head.

The Resolutions of the Committee of Supply are then reported to the House and embodied in a Bill and sent up to the House of Lords. To guarantee that the money voted has been properly spent by the executive

there is a Comptroller and Auditor-General whose report is laid before the Public Accounts Committee of the House. This Committee is appointed annually by the House and reports to it all cases of irregularity.

Much of the revenue is raised under the authority of permanent statutes which are not usually re-enacted every year. But the House resolves itself into a Committee of Ways and Means in order to find the money sufficient to meet the expenditure it has sanctioned and all its resolutions are embodied in a bill and placed before the House. All money collected should be paid into the Bank of England to the account of the Exchequer, and none of it may be withdrawn without the express sanction of the Comptroller and Auditor-General.

The control of the House of Commons over Finance is not effective at present. As a rule the time allotted for the discussion of the estimates is only twenty days, and most of it is devoted by non-government members to questions of policy. No attempt is made to deal with the function of control. It has been suggested that this work should be delegated to small committees (as in France or the United States) which after scrutiny shall report back to the House. It is claimed that under such a system much of the experience and ability of members that now runs to waste may be utilised to secure increased economy and efficiency in financial administration without at the same time impairing the responsibility of the Ministers.

The last great function of the House of Commons is its control over the general policy of the Government, 'the grand inquest of the nation'. It is only in this sphere that the English Parliamentary system seems to give maximum satisfaction. Faced every day by eager critics and able rivals, "His Majesty's Opposition,"

Control over the General Policy of Government whose acknowledged duty is to oppose without laying themselves open to the charge of disloyalty to the State, the Government is put to the hard necessity of expounding its policy and defending its measures on the floor of the House so as to carry conviction to a wider audience, the country at large. Here lies the greatest merit of the English system and no constitution in the world possesses it to the same degree.

On the whole, the House of Commons as at present constituted and organised, is far from fulfilling the true ideal of a representative democratic chamber. So much work is thrown on it that it cannot find time to do anything satisfactorily. Year after year it passes about a hundred statutes without adequate discussion. In fact the history of the last fifty years is the history of the development of the devices for the prevention of parliamentary discussion. First came the 'Guillotine' (1887) by which discussion on a bill was to cease at a particular time and the remaining clauses were to be directly put to vote by the Chairman. The 'Closure by Compartments' (1893) is another device by which the Government can cut short debate by getting the House

through its party majority to declare that the different stages of a Bill under discussion shall be concluded on certain dates fixed beforehand. The third device is picturesquely called the 'Kangaroo Clause'. For it gives the Speaker or the Chairman of the Committee of the Whole House power to select from the numerous amendments appearing on the order paper only a few and to pass over the rest.

Out of the pressure upon the time of the House there has gradually developed the system of legislation by reference and of administrative laws. Today the essence of law-making has passed from the House to the Civil Service. For every one hundred statutes passed on an average every year, there are 3000 administrative orders, each one of which has vital concern to the daily working of citizen's lives. While the cabinet minister is swallowed up in routine, the private member is prevented from contributing effectively the fruits of his experience and judgment to the work of administration, his business being not to discuss but to vote.

Again everything is centred in Parliament and this over-centralisation hampers the machinery of legislation and administration at every step. In the words of Laski, 'legislation centralised as ours results in apoplexy in the centre and anaemia at the extremities. It is good for neither Whitehall nor Local government. It deprives local authorities of initiative and responsibility, and the result is apathy in the electorate'.

The Hall in which the House meets is small in size and the seating capacity insufficient for all the members. Down the centre runs a broad aisle "the floor of the House," at the upper end of which stands the Speaker's chair on a dais with a canopy over it. Below the chair are the seats and tables for the clerks and also a large table for the reception of the Sergeant's mace and the official boxes and papers. On either side of the aisle facing each other are tiers of long benches, with a narrow passage cutting across which is known as the gangway. No desks are provided for members, nor any tribune to speak from.

On the front bench by the great table and to the Speaker's right sit the cabinet ministers; hence the name the Treasury bench. Facing the ministers and to the left of the Speaker sit the Opposition leaders. Behind the Treasury bench and the Opposition, the other members sit in serried ranks according to their party leanings. Men with no strong party allegiance sit below the gangway on either side. This arrangement of seats lends a dramatic touch to the contest between the parties during parliamentary sessions, the House appearing like the battle-field of old with leaders facing each other and the rank and file drawn up behind in battle array.

On the meeting of a new Parliament, the Commons are summoned to the Chamber of the Lords. After the letters patent

Organisation and Procedure

Seating Arrangements

The Speaker

authorising the session are read, they are commanded to choose a Speaker. The next day the Speaker and the Commons appear at the bar of the House of Lords; and the Lord Chancellor, on behalf of the Crown, approves of the choice and guarantees the ancient rights of the Commons. They then withdraw to their own chamber, where the oaths are administered. The next day if the King opens Parliament in person, he goes in state to the House of Lords, and after taking his seat on the throne commands through the Lord Chamberlain and the Gentleman Usher of the Black Rod, the attendance of the Commons once more. On their presenting themselves, he or the Lord Chancellor reads the speech from the throne and then retires. Thereupon the Commons return to their House where the King's speech is re-read and an address in reply voted. After this, regular business begins.

The Speaker is elected by the members of the House from among themselves at the beginning of a parliament and holds office till its dissolution. The selection is made by the Government of the day from its followers. But it has become a well-established rule to re-elect the same man, without any regard to changes of party, as long as he should be willing to serve.

The main feature of the Speaker's office is absolute impartiality. From the moment of his election he ceases to belong to any party. By an act of Parliament he has been forbidden to accept any office of profit under the Crown. It has become an unwritten

law that after retirement from his office he should not reappear in the House in any capacity. By these various means his unvarying impartiality has been thoroughly secured. His functions have been regulated partly by custom and conventions and partly by the standing orders of the House. As the name implies, he is the spokesman of the House, its representative to the public, to the Crown, to the House of Lords and to other departments of the state. He communicates its orders, publishes its decisions and conveys its thanks. But this is only a small part of his work. His main function lies in his being the director of the proceedings of the House. He presides at all its meetings, unless ill-health compels him to leave that duty to his Deputy, maintains discipline, settles points of order, divides the House on questions and announces the result. He may not speak to a question unless in committee, but in practice never joins in a debate. Only in case of a tie he votes, and even then not according to his personal predilections, but in consonance with some general constitutional principle or the probable intention of the House. "The guiding principle is that the Speaker is not the master of the House, but its representative, its leader and authoritative counsellor in all matters of form and procedure."¹ His disciplinary jurisdiction includes power to suspend a member who disregards his authority. On points of order there is no appeal from his decision. It is left to

¹ Redlich, *The Procedure of the House of Commons*, Vol. II, p. 143.

his discretion to put a closure motion to vote or not. He may pull up a member for persistent irrelevance or tedious repetition. He has to hold the scales even between the Government and the Opposition, to protect the majority against obstruction and the minority against oppression. His right of certification with regard to Money Bills throws into his hands enormous power.

The Speaker's symbol of authority is the mace which lies on the table before him when he presides. His official residence is Westminster itself. He is paid a salary of £5,000 a year which being a charge on the Consolidated Fund cannot be voted by the House. On retirement he receives a peerage and a pension of £4,000 per annum. When the House goes into Committee, the Deputy Speaker, "the Chairman of the Committees", presides. Though his authority is the same as the Speaker's, his dignity is inferior. The Speaker has a large staff of officers to help him, of whom two deserve mention, the Clerk of the House of Commons and the Sergeant-at-Arms. The former is the most important and is appointed by the Crown for life. He signs the orders of the House, endorses the bills sent or returned to the Lords, reads whatever is required to be read in the House, and has the custody of all records. The Sergeant-at-Arms is appointed by the Crown, but he is a servant of the House who may be removed for misconduct. He attends the Speaker, with the mace, on entering and leaving the House and executes the orders of the House. He is also responsible for the

maintenance of order in the lobby and the passages of the House.

The House meets from Mondays to Thursdays at 2-45 P.M. Nearly an hour is devoted to small items of formal business and to the asking and answering of questions, and then public business begins. Except by special resolution, sittings terminate at 11-30 P.M. For the discussion of the budget however there is no fixed hour for adjournment. On Fridays the House meets at 11 A.M. and usually business is confined to the discussion of Private Members' Bills.

Forty members including the Speaker constitute the quorum. If the attention of the Speaker is drawn to the want of a quorum the two-minute sand-glass on the Clerk's table is turned and the members are summoned by the ringing of electric bells. At the end of the two minutes, if it is found that there is no quorum the House adjourns until the time fixed for the next regular meeting.

It is not easy for a new member to learn quickly the rules of the procedure of the House. To one who asked how he could learn them, Parnell replied, "By breaking them." Speeches must not be read, but notes are allowed. The King's name should not be mentioned, nor should the proceedings of the House of Lords (usually spoken of as "another place") be directly referred to. Remarks should be addressed to the Speaker. A member must speak from his place and

only once on any question, unless it be in committees or to offer a personal explanation. He must refer to other members by their constituencies, not by name. Debate ordinarily closes on the passing of the motion by a member, that the question be now put, or on the expiry of the time allotted beforehand for discussion.

The Speaker or the Chairman states the question to be voted upon and calls for the Ayes and the Noes. The apparent result, as judged from the sound, is announced by him. If none challenge, the vote is recorded. In case of a challenge, strangers are asked to withdraw, bells are set ringing for two minutes, and then the doors are locked. The question is once again put and an oral vote is taken as before. If the result is still challenged, a division is announced by the Speaker. Members are allowed to pass either through the 'Aye' lobby to the right of the Speaker or through the 'No' lobby to the left, and as they are returning to their places in the House, their names are recorded by the division clerks and the numbers counted by four tellers appointed by the Speaker. Members are not obliged to vote, nor is it necessary for them to hear the question put before they vote.

CHAPTER IX

THE JUDICIARY

OF all the functions of Government the administration of justice is the most important to the individual citizen. In judging the excellence of a Government, no test is so decisive as the efficiency of its judicial system. The machinery of legislation may be elaborate, the laws themselves perfect and the methods of execution swift and satisfactory; but if the laws are dishonestly administered 'the salt has lost its savour.' No country affords such ample safeguards for the liberty and rights of the individual as Great Britain. An individual citizen who feels aggrieved in the matter of personal freedom has three remedies open to him. The first is the Habeas Corpus, the second the prosecution of the offender and lastly civil action for damages. But all these remedies are obtainable only in courts of law. Everything therefore hinges on the system of judicial administration and the character of the judges.

The greatest feature of the British Judicial administration is its insistence on the Rule of Law. This essentially means equality before the law. There is not one law for the rich and another for the poor, nor any discrimination between officials and private citizens. Every one is amen-

able to the ordinary law of the land as administered in the ordinary courts. While in countries with written constitutions the rights of the individual subject are derived from the general guarantees of individual freedom, the reverse is the case in Britain as pointed out by Dicey.¹ No man may be lawfully imprisoned or punished or condemned in damages, except for a violation of the law proved to the satisfaction of a judge or jury or magistrate in proceedings regularly instituted in an ordinary Court of Justice. Such rights as personal liberty, freedom of speech, freedom of the press and public meeting are all the result of the application of the above principle. But one's faith in the Rule of Law is bound to decline if the rule-making power of the executive is not brought under strict judicial scrutiny. Lord Hewart has made it abundantly clear in his '*New Despotism*' that the increase in delegated legislation uncontrolled by the judiciary must mean the establishment of bureaucratic despotism and the end of the Reign of Law under which the British citizen has hitherto lived.

Another feature of the British judicial system is the separation of the executive and the judicial functions. In fact the theory of the Separation of Powers has been fully followed in the English constitution with regard to the judiciary. The interpretation or application of the law and its execution have been lodged in two different bodies. The executive are not

¹ *The Law of the Constitution* (8th Edn.), p. 191.

judges in their own cause and have no power to interfere with the course of justice. The judiciary is also distinct from the legislature except for the appellate jurisdiction of the House of Lords. The legislature cannot reverse any particular decision of the judges, though it can make repetition of a judgment of which it disapproves, impossible for the future by amending the law.

Closely connected with the second feature is the third, the independence of the judiciary in Great Britain. Judges of higher rank hold office during good behaviour and are therefore removable only on addresses from both Houses of Parliament. Inferior judges hold office at pleasure, but are practically irremovable and are not subject to any executive pressure. Notwithstanding their appointment by the executive, the tenure of the English judiciary is therefore quite secure. The salary of the judges may not be increased or decreased during their tenure of office, and they are immune from criminal and civil liabilities for acts done within their jurisdiction.

The independence of the British judiciary is well-known. For many centuries judges in England have considered it their duty to protect the citizen against the arbitrary action of the King and his officers, and have always been ready to throw round him their mantle of protection as against the executive. Much of the liberty now enjoyed by the English people is the result of judge-made law.

The main function of the English judiciary is of course the application of laws to specific cases and therefore judges can act only in respect of actions that have taken place. It is outside their province to give decisions on hypothetical questions. Attempts made by the executive to secure such anticipatory judgments have been rightly condemned.

English judges have certain quasi-executive functions also, such as administration of trusts, winding up of companies, distribution of bankrupt estates. They also issue decrees creating, transferring, or extinguishing rights such as adjudications in bankruptcy.

They also in a way exercise the legislative function for the Rules Committee which is composed of the Lord Chancellor, the Lord Chief Justice and several other judges, has got power to make rules of procedure. But these rules must be laid before Parliament and may be annulled by Order in Council on an address from either House¹.

English courts may be divided into two broad classes, Central or Superior Courts and Local or Inferior Courts located in different places of the country. They are sub-divided into Criminal Courts which concern themselves with crimes against the State and Civil Courts whose business is to inquire into cases relating to the rights of citizens.

¹ Keith, *British Constitutional Law*, p. 140.

At the lowest rung of the ladder are the courts of the Justices of the Peace, lay Criminal Courts magistrates appointed by the Lord Chancellor. The courts are of two kinds: Petty Sessions which meet frequently (in the towns, daily) and Quarter Sessions, held four times in a year. In the larger boroughs stipendiary magistrates chosen from barristers of not less than 7 years' standing and appointed by the Home Secretary preside, and in a few others, Recorders (chosen from barristers of not less than 5 years' standing) hold Quarter Sessions. In the majority of cases the magistrates are assisted by a jury. An appeal lies to a Divisional Court of three judges.

Offences of the most serious nature are tried by the High Court of Justice either in Assize Courts London or at Assizes. England and Wales have been divided into seven circuits, and three assizes are held every year in each generally. They are usually attended by a judge of the High Court. Questions of fact are decided by a jury whose verdict must however be unanimous.

The Court of Criminal Appeal consists of at least three judges and hears appeals from the Quarter Sessions and the Assizes, from the Central Criminal Court in London and from the King's Bench Division upon criminal matters.

The County Courts:—England is divided into 500 districts and these are grouped into Civil Courts circuits to each of which a judge is

appointed by the Chancellor. There are 50 such judges. They sit with or without a jury and try cases in which sums not above £100 are involved.

The High Court has three divisions: (a) the King's Bench Division, presided over by the Lord Chief Justice, deals with civil cases between parties, and pleas of the Crown; (b) the Chancery Division, presided over by the Lord Chancellor, deals with trusts, company matters wills etc. and (c) the Probate, Divorce and Admiralty Division.

From the High Court of Justice an appeal lies to the Court of Appeal which consists of six permanent members, the Master of Rolls and five Lord Justices and of the heads of the three Divisions of the High Court and the Lords of Appeal in Ordinary.

A further appeal lies to the House of Lords as a judicial body.

The Long Parliament of 1641 deprived the Privy Council of all jurisdiction in England. But it still remains the supreme Court of Appeal from India, from the Dominions and the Colonies. It also hears appeals from Ecclesiastical Courts.

It consists of the Lord High Chancellor, Lord President of Privy Council, six Lords of Appeal in Ordinary and such members of the Privy Council as hold or have held high judicial office. The Dominions

are represented by judges of their Supreme Courts who are Privy Councillors, and India by two paid judges. Ordinarily it does not act as a Court of Criminal Appeal. As it is not a court technically, its findings do not take the form of court decisions, but are mere recommendations to the Crown to grant or reject the petitions and appeals. The quorum is three and the opinion must be unanimous.

The existence of this right of appeal to the Privy Council is not popular in the Dominions, partly owing to national feeling and partly on account of delay and expense. Canada and India, however, seem to be the two exceptions. In the former case racial disputes and religious divisions, and in the latter lack of confidence in local courts, appear to be the chief reasons.

CHAPTER X

PARTIES AND PARTY GOVERNMENT

THE wide extension of the franchise has thrown on the citizen-body the responsibility of not only choosing a representative but also of giving a decision on problems and policies. But much the largest portion of the electorate is so uninformed, inarticulate, and indifferent that it cannot do its work without some sort of guidance and stimulus. It is necessary therefore to educate the voters and arouse their enthusiasm, to drill them and take them to the polling booth.

Further the vast scale of a modern civilised state makes it imperative that citizens who want to make any impression on political authority must co-operate and combine in order to realise their ideals. They must attach themselves to some political organisation whose policy approximates to their own. It is this need for organised co-operation among those who think alike on the major problems of the country that has given rise to political parties.

Representative democracy cannot do without parties. The problems of government that call for solution are many, varied and extremely perplexing to the ordinary citizens. Parties select the most urgent

ones, offer their solution and arrange for the citizen-body to vote on them. Their function therefore resembles that of modern brokers or general contractors. They put forward candidates for election and recommend them to the electorate. They stimulate public interest through the platform and the press and organise the forces to secure victory at the polls. In these diverse ways they canalise the political activities of the citizen-body and make it possible for it to pursue a concrete coherent policy and act in unison for its achievement.

The need for such party organisation within the legislature is no less vital to a modern democratic state than it is in the country itself. In fact, in England parties were at first confined only to Parliament. Both the Government and the Opposition were eager to secure the support of the members, who, having been elected either through territorial influence or through patronage or corruption, were really independent of their constituencies. It was only when they could not get a sufficient number of followers that they bought Parliamentary boroughs on their own account or helped their friends in their electioneering campaigns. Thus English party organisations, originally confined to the walls of Parliament, came to extend their action over the country at large.

Party Government The party system of government is an integral part of the working constitution of Great Britain and the very conventions of English Parliamentary rule grew

out of party strife.¹ The cabinet can perform its functions successfully only with the aid of the party majority; its solidarity is due to the fact of its members belonging to one party; the Prime Minister owes his great position to his leadership of the party in majority in the House of Commons.

The division of members into Whigs and Tories resulted in one party taking up the responsibility for its measures of government and defending them in the House, and the other taking upon itself the duty of opposing them. The principle was gradually well established that the defeat of the party in power over one of its vital proposals indicated that it had forfeited the confidence of the majority of the members and that its opponents must be given a chance to shoulder the burden of administration in accordance with their declared policy. Thus the two parties came to be arrayed against each other and every member had to make up his mind to enlist in the ranks of one or the other party and follow it on all occasions. Loyalty to the party and loyalty to its chief led to the sacrifice of personal opinions, and members voted so as to keep their party in power, lest their opponents should get in Government seemed more like an organised quarrel for power than a sincere attempt by all the members to grapple with the problems of administration and arrive at a satisfactory solution.

¹ Cf. Lowell, "*The Government of England*," Vol. I, pp. 456 to 460.

In Great Britain for a long time the dual party system obtained. Many think that the existence of a responsible ministry requires as a condition of success that there shall be only two parties and no more. There is no doubt whatever that the two-party system offers the easiest and simplest solution to the problem of government in a modern representative democracy. Under it the choice of government is simple and automatic; on the fall of one party, the Opposition assumes power. It enables the Government to give effect to its policy by necessary legislation without any delay. Lastly, the concentration of authority is a valuable means of enforcing responsibility for failure.

But the two-party system seems bound to disappear. In the new era of reconstruction and reforms, as the lines of cleavage increase, as new ideals, policies and interests arise, new political groups would be formed, which may not fit into a two-party system of the English type. Even in England, the Irish Nationalists once formed a very powerful irreconcilable group and almost succeeded in throwing out of gear the old parliamentary machine. Today there are three parties, the Conservatives, the Labourites, and the Liberals. It is true that the Liberal party is living on the credit of its past and this is fast being exhausted; but then neither the Conservatives nor the Labourites are held together by common ideas and aspirations. There is so much of intestine strife, rival policies, artifices and manœuvres that even these parties show signs of breaking up, giving rise to new combinations and groups. The pre-

sent National Government is evidence of the break-up of the old system and gives point to the following remarks of Ostrogorski made thirty-two years ago. "The orthodox doctrine of parliamentary government which presupposes "two great parties" in the chamber and under the English system, a ministry naturally homogeneous and united and jointly responsible to the chamber, has had its day. The "two great parties" have ceased to exist; in almost all parliamentary countries the assembly is now composed of more or less shifting groups which do not admit of any permanent classification. In consequence, the majority, at least the constant majority, is a fiction, the homogeneity of ministers a farce, their solidarity a blind and their responsibility a delusion."¹

As has been already observed the English Parliamentary system rests on the assumption that there shall be two great parties alternately winning power and place. This involves the maintenance of strict discipline not only among the supporters of the Government, but among the members of the Opposition as well. Though the feeling of responsibility of the members to their constituencies may be strong enough to induce them to be regular in their attendance at the House, no party can afford to stake its ministerial

¹ Ostrogorski, *"Democracy and the Organisation of Political Parties"* Vol II, p. 713. See also the remarks of Ramsay Muir on the break-down of the two-party system; *"How Britain is Governed"* pp. 145—152.

existence on the mere strength of this feeling. It must therefore organise itself in such a manner as to be certain of support from its members whenever any fateful division takes place. This important duty of keeping in hand the members is performed by the party 'Whip', a name borrowed from fox-hunting where it denotes the huntsman's assistant who whips in the pack of hounds. The Whips of the two parties have been compared to the stage-managers of a play, the Prime Minister and the Leader of the Opposition assuming the role of Directors. The latter work in broad daylight, while the former act from behind the screen unknown to the public. The Whips are chosen by the members of each party and have great influence in its councils. They are in the secrets of the plan of action laid down by the party leaders and in constant touch with the members in the lobbies of the House and elsewhere so that they may promptly report to the chiefs the trend of general opinion and any likely defections. They act "as the aides-de-camp and intelligence department" of the leaders. In the words of Canning, the chief business of a Whip is to make a house, to keep a house and to cheer the Minister. "Inducing members to attend regularly at the sittings, and particularly securing their arrival and remaining for particular times at which critical divisions are to be expected, are the daily tasks of the 'Whippers-in.' They are carried out by sending of what are called "Whips", *i. e.*, notes containing a request for punctual attendance on such and such an occasion. According as this

request is singly, doubly, trebly or quadruply underlined is it regarded as less or more urgent. To disregard a four-line whip, in the absence of really unavoidable obstacles, is considered an act of gross disloyalty to the party and may have serious consequences. As a matter of fact, the Government Whips exercise very stern discipline.

Further inducements to good discipline are afforded by the official publication of the division lists and by the fact that the absence from important divisions is keenly noted by the London and local party papers, as well as by the party organisations in the constituencies.

A very important duty which falls to the Whips is the arrangement of "pairing." The rigorous discipline as to attendance has led to efforts being made to deprive absence from a sitting, or part of a sitting of its chance character, by arranging that the absence of a member from one side of the House shall be balanced by a simultaneous absence of another member from the opposite side; in this way the proper relation between the parties is, as far as possible, maintained. Pairing in the House of Commons has become a minutely regulated institution and it is regarded as a serious failure in political duty to go away, even for urgent private affairs, without finding a pair."¹

¹ Redlich, *"The Procedure of the House of Commons"* Vol. II, pp. 109 and 110; see also Ostrogorski, *"Democracy and the Organisation of Political Parties"* Vol. I, pp. 137, 138.

Before 1832 there was no regular party organisation in the country. But after the great Reform Act, it was necessary to get the new, inexperienced, and indifferent voters on the Parliamentary register and in several districts "registration societies" were started. About the same time central party organisations came to be established in London, the first of these being the Carlton Club founded by the Conservatives. The Liberals founded a similar institution, the Reform Club which became the headquarters of the Liberal Party. The Labour Party was founded in 1900. Today the three parties have a net-work of organisations throughout the country.

The Conservative and Unionist Party is the heir of the Tory Party. In 1886 its ranks were strengthened by secessions from the Liberal Party owing to the Irish Home Rule question (hence the name Unionist). Its outlook is imperialistic and in commerce it generally favours protection. The Liberal Party is the heir of the historic Whig Party. It favours free trade, land reform, industrial self-government without interference with individual enterprise. In foreign policy it is on the side of the League of Nations. The Labour Party started as a federation of trade unions, socialist societies and other working-men associations. Subsequently individual men and women were admitted, whether they were members of trade unions or not. The party stands for socialisation of land and means of production, popular control of industry, international peace

and disarmament, progressive self-government for native races and international labour legislation for raising the standard of life among the workers.

The National Conservative Union and the National Liberal Federation are the central organisations of the Unionists and the Liberals respectively. They have their headquarters in London. Affiliated branches have been formed in each polling district of a constituency. These are the germ-cells of party structure, being made up of the most influential and active followers of the party in that area. They elect representatives to the party council of the entire constituency, and from these constituency councils representatives are sent to form councils for the counties and boroughs; and from these again representatives are chosen for the central organisation in London. A great deal of influence is exercised on all constituencies by the party leaders in Parliament whose 'open letters' and addresses serve as a guidance to the affiliated branches.

The Labour Party has worked out a more elaborate and complicated system of organisation. The Executive of the party in the country is quite distinct from the Executive of the party in Parliament. Its members are appointed partly by the annual conference and partly by the Trade Unions which supply it with funds. On account of its control over these funds, the Executive dominates all local organisations. There are two other organisations with which the Leader of the Labour Party has to deal, the Trade Union Congress and the

Independent Labour Party. The former claims a sort of concurrent jurisdiction, because it supplies the party funds, while the latter is an independent propagandist body working in the cause of ultra-socialism and wields great influence in the country.

Great Britain possesses a vast Empire. But the relations between it and the component parts, and those among the latter themselves vary much. In the first place there are the great self-governing Dominions, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State. The Statute of Westminster of 1931 has definitely fixed the status of the Dominions as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

The three semi-autonomous units, India, Malta and Southern Rhodesia, form a class apart. Then there is a large number of Dependencies, Colonies in various stages of self-government, Protectorates having wholly nominated or partly elected legislative councils and several Mandated Territories (Palestine, Tanganyika) and Protected States (British North Borneo, Sarawak and Zanzibar).

CHAPTER XI

FRANCE: FEATURES OF THE CONSTITUTION— THE EXECUTIVE

FRANCE has a written constitution which however is not comprised in any one document, but in a series of separate laws. Features of the Constitution: Fundamental laws There are three such important statutes, *viz.*, the Statute of February, 1875, which provides for the organisation of the Powers of the State, another statute of the same year which deals in greater detail with the organisation of the Senate, and the Statute of July, 1875, which fixes the relations of the Powers of the State among themselves.

Besides these three fundamental laws, two statutes were passed in the same year, namely, the Statute of August, 1875, which Organic laws prescribes the rules for the election of Senators and the Statute of November, 1875, which deals with the election of Deputies. There have been since other constitutional enactments which relate to the seat of the Executive Power and of the two chambers at Paris and to the amendment of the previous statutes regarding the election of Senators and Deputies. All these are called organic laws and differ in their legal basis from the three "Constitutional

Laws" which alone are referred to as the Constitution of 1875. They may be amended or repealed by the ordinary process of legislation.

The constitution of the French Republic thus differs from that of England in having
Constitution fragmentary and brief and been reduced to writing. It is however unsystematic, incomplete, fragmentary in character, many things having been left to be settled by usages, practice and precedents. It contains few provisions defining exactly the sphere of the activities and functions of each public body, nor has it prescribed, after the model of all preceding French constitutions, the elementary and fundamental rights of the individual, something like a Bill of Rights which no power in the state can infringe. While matters of quite minor importance such as the chambers meeting in public and electing each year their presiding officers are included in the constitution, such essential factors of government as the organisation of the judiciary and that of finance have not been specifically mentioned. Perhaps such things are to be taken as having survived from the state of affairs before 1875. Again there is no authority to decide if the "Constitutional Laws" have been contravened by ordinary legislation. In short, the constitution has done little more than establish the bare framework of government by declaring what the chief organs of the Republic shall be, leaving them almost free to exercise their authority at their discretion. The reason is that in the disturbed condition of the country, Paris being besieged and the whole

nation being in great straits, the National Assembly chosen with indefinite powers by universal suffrage did no more than provide for the immediate organisation of government in as brief and practical a manner as possible.

This brevity and incompleteness of the constitution have perhaps accounted for its success. From 1791 to 1870 France had had eleven constitutions. Some of them were ideally perfect, but none endured. But the illogical and incomplete constitution of 1875 has so far resisted all internal shocks. It has shown itself capable of adjustment, like the English constitution, to varying conditions of environment and hence of healthy and spontaneous development.

According to Article 8 of the Law of February 25
the chambers shall have the right by
Amendment of the Constitution separate resolutions taken in each by
an absolute majority of the votes,
either upon their own initiative or upon the request of
the President of the Republic, to declare a revision of
the constitutional laws necessary. After each of the
chambers shall have come to this decision they shall
meet together in National Assembly to proceed with
the revision. The acts effecting revision of the constitutional laws, in whole or in part, shall be passed by
an absolute majority of the members composing the
National Assembly.

Proposals of amendment may therefore be made either by private members or by the cabinet acting in the name of the President. The absolute majority

required in the National Assembly has been interpreted to be half plus one of the legal number of members, without deducting vacancies caused by resignation or death or otherwise. The National Assembly when once summoned for constitutional change, need not limit itself to the specific resolution submitted to it, but may proceed to amend other articles of the constitution. In fact, when it was summoned in 1884 to consider the resolution of the two chambers that the "Republican form of Government shall not be made the subject of a proposed revision", it went beyond its scope and added the provision that "members of families which have reigned in France are ineligible to the Presidency."

Thus the power of amending the constitution is lodged in the same body that has the power of ordinary legislation, but the procedure is different. The French Legislature is nearly as absolute as the English Parliament, and the constitution can be readily changed, should the two chambers agree. But in actual fact amendments have been few.

THE EXECUTIVE

The head of the Republic is the President who
The President: is elected for a period of seven
Method of elec- years by the National Assembly,
tion *i.e.*, the Senate and the Chamber
sitting together at Versailles. The election is not preceded by any campaign in the country nor are any nomination speeches or debate permitted within the Assembly Hall. Each member votes when his name is

called and the voting goes on until a candidate has secured an absolute majority of the valid votes cast.

The same man is eligible for re-election for any number of terms, but convention has been against it. Any French citizen who enjoys full civil and political rights and who does not belong to the royal house may be elected. The dignity of the office attracts politicians of extensive parliamentary experience.

The President is an indispensable part of the constitutional machinery, for he stands ^{Privileges and Functions of the President} for national unity and the permanence of the executive power. He receives an annual salary of a million and quarter francs and has the use of the Elysée Mansion and a country residence. All the homage of Royalty is paid to him.

He has both executive and legislative powers. In his executive capacity he supervises and secures the execution of the laws, appoints all the officers of government, issues ordinances, grants pardons, disposes of the armed forces, presides over public ceremonial functions, receives the diplomatic agents of foreign powers, negotiates and ratifies treaties subject to the approval of the chambers. He may also declare war with the consent of the legislature. He can initiate legislation, but has no veto. Though he has the power of asking the chambers to reconsider a bill, the right has never been exercised. He may adjourn the chambers for a month, but not more than twice during the same session. He may dissolve the Chamber with the consent of the Senate, but this right too has rarely been

used. He has the right to address messages to the legislature.

The vast powers of the French President are however illusory as every one of his acts has to be countersigned by a minister. He can therefore, like the British King, do no wrong. He has however two important functions. One of them is the selection of the person who is commissioned to form a ministry, though here too custom prescribes that he should consult the President of the Chamber with a view to secure a Prime Minister who will have the confidence of the legislature. The other function lies in advising his ministers in their conduct of public business, especially in the department of foreign affairs. His long tenure of office and the presidency of the Council of Ministers lend great weight to his advice.

Unlike the American President who governs as well as reigns, the French President does not govern nor can his reign last more than seven years. His position resembles that of a monarch elected for seven years and possessing great dignity but hardly any responsibility or personal power.¹ He may be impeached for high treason.

As in England the real executive power is wielded by the Ministry. It consists of the
The Ministry leaders of the political groups in the ascendant in the two chambers and in charge of the several portfolios of administration. Legally Ministers

¹ Cf. Bryce, *Modern Democracies*, Vol. I, p. 253.

need not be members of either chamber, but usually they are. The only exceptions are the Ministers of War and Marine, who are frequently professional men unconnected with the game of politics. Unlike the members of the cabinet in England, the French Ministers have free access to either chamber and participate in the debates of both houses, there thus being no need for under-secretaries as in England to represent the Ministers in one or the other of the two houses. But as certain Ministers are over-burdened with work, they are assisted by under-secretaries who are almost always members of parliament. These are not ministers in the constitutional sense. But they are regularly summoned to the meetings of the Ministry and have a right to be heard in either chamber. They go in and out of office with the Ministry.

The duty of the French Ministry is two-fold as in
Powers all other parliamentary governments,
i.e., to represent the Government in
the chambers and defend its measures and also to
manage the department of administration entrusted to
each minister. The size of the Ministry is not fixed by
law, but variable according to circumstances. At
present there are fourteen Ministers. The Ministers
are collectively responsible to the chambers for their
general policy and individually for their departmental
acts. They resign on an adverse vote on any proposal
of importance or on a vote of want of confidence.

The official designation of the French Premier is
the President of the Council of Ministers. He has not

the same autocratic authority of the English Prime Minister. Though he virtually appoints the other ministers and may remove them, his dependence on a coalition of parliamentary groups detracts a great deal from his authority.

The Council of Ministers which generally meets twice a week is presided over by the President. But the Ministers may hold meetings of their own at the office of the Premier. The proceedings of both these meetings are secret; no secretary keeps any record. The Prime Minister frequently issues to the press a bald summary of the proceedings which however contains no reference to the serious discussions and conflicts of opinion within the council.

The French Ministry wields great power and influence. This is due to four reasons. In the first place the French Government is paternal. The State has control over all trades and occupations through police inspection, licensing and regulating such trades. Secondly, France is a highly centralised unitary state; the habit of looking to the central authority for guidance, the destruction of all local divisions by the Revolution of 1789 and the fear of disorder which is constantly present in the minds of the Frenchmen make them crave for a master sufficiently strong to put down troubles. Thirdly, owing to a sharp distinction between private and public law, the French Executive possesses enormous powers which in England are lodged in the legislature or the judiciary. Lastly, the laws passed by the French Parliament are usually, in very general

terms. The details are filled in by executive decrees or ordinances issued in the name of the President without any special authorisation or delegation as in Great Britain which however have to be submitted to the Council of State for scrutiny before promulgation.

But the great powers of the French Ministry are neutralised by the instability of the
Instability of the Ministry of French Parliamentary Government.
The multiplicity of political groups stands in the way of any one of them dominating the chambers; and this has led to the frequent formation of coalitions in order that a working majority may be secured. The average duration of a French Ministry, from 1875 to 1930 has been less than ten months. But the new ministry may contain a large majority of members who belonged to the condemned cabinet and who were responsible for the policy that brought about its downfall.

This precarious position of the French Ministry
Interpellation has been rendered worse by the French system of interpellation. In England any member may put a question to a minister regarding the administration of his department and obtain information. But without the consent of the minister no question may be put and no discussion may arise out of it. But in France a member may force the hands of a minister and precipitate a debate by exercising his right of interpellation.

The instability of the French Cabinet does not however mean discontinuity of policy.

Instability, but
no discontinuity of
policy

“The change of cabinets in France has not the significance it would have in England. It does not mean a reversal of policy. Generally it means more efficiency in carrying out the same policy. The new cabinet takes up the burden where the last one lays it down. Behind them all stands Parliament absolute master of the whole situation, ready to dismiss the new ministers as soon as they show weakness or commit a blunder. The passing of the French ministers is rather a sign of stable policy than of variability as would be the case in England. . . There is no senseless swinging of the pendulum from extreme conservatism to extreme radicalism. . . . It has not been a choice between opposite poles, but between more or less of the same thing . . . A country which seems a paradise of anarchy when one reads of its shifting ministries exhibits upon examination a surprising degree of regularity, where year by year the scope of reforms is enlarged, the democratic bases of the Republic are strengthened, and its enemies in army or church suppressed.”¹

However certain practical disadvantages result from this instability. Responsibility cannot be easily brought home. The ministers are not sufficiently long in office to be held accountable for their sins of omission

Practical
advantages

Dis-

¹ Shotwell quoted in Sait, *Government and Politics of France*, p. 95.

and commission. Secondly, the chambers are prevented from applying themselves to serious legislative work. Thirdly, the business of administration is impaired. The short tenure of the minister leaves the French civil servant master of the situation as each new minister is disinclined to undertake any great changes and ready to let the machine run in its old grooves. The consequent lack of effective control over the bureaucracy has frequently led to administrative delays and abuses.

As the head of an executive department, the French minister has heavy work to do and is helped by the Permanent Civil Servants. Every ministry has been divided into four or five *directions* or services, at the head of each of which is a director. These directors hold the highest rank in the civil service. They meet together occasionally as a 'council of directors', to discuss the general administration of the department, with the minister as president. When the departmental budget is under discussion in the legislature, they take part in the debates in their capacity as "government commissioners" and assist the minister in getting the credits granted. They are also appointed as members of some of the consultative commissions set up to advise the ministry in administrative work.¹ They also sit in the

¹ "These Commissions are an excellent feature of French administration; they bring together political, administrative and lay elements into useful co-operation. They are for the most part technical bodies to which matters are referred for advice, some being appointed by decree or ministerial order and some (like the

Council of State as special councillors. But their main function is the supervision of the work of the four or five bureaux which compose each *direction*. The bureau is the most important unit in the administrative machine. The minister's decisions are based entirely on the suggestions put forward by it. As a writer has put it, "in the place of a parliament which makes the ministers, they in turn regulating the action of the bureaux, we have bureaux which regulate the action of the ministers and through them give impetus to parliament."

As in England almost all appointments to the Civil Service are made on the results of a competitive examination. There are several grades and classes. Promotion from grade to grade and from class to class is made by the minister on the basis of a list prepared by the council of directors in accordance with certain laws and decrees which however have given rise to irregular favouritism and consequently to chronic grievances especially among lower officials. All the officials enjoy the advantages of a generous pension system. They cannot be removed from service except after an elaborate enquiry. Though the salary is not large, the tenure is so secure and the prestige so great that places in the ministries are highly valued.

A special feature of the French departmental organisation is the existence of a body of intermediaries between the minister and the permanent staff of

superior council of public instruction) being elected. The number connected with each ministry varies from five to forty-three." Sait, *op. cit.*, p. 110.

civil servants. It is called the cabinet and includes a chief, an assistant chief, a secretary and several attachés. They are the confidential lieutenants of the minister, appointed at his discretion. They receive usually no salary. The office is however much coveted on account of its prestige and prospects. "The cabinet incarnates the authority of the minister. It lives his life, it shares his fortune: an unstable situation, but a privileged one. And before the minister descends from office he makes it a point to find for the members of his cabinet desirable places in the permanent service, by special decrees (if necessary) suspending the ordinary rules that govern appointments".¹

¹ Sait, *op. cit.*, p. 109.

CHAPTER XII

FRANCE: THE LEGISLATURE: THE JUDICIARY

THE French Parliament is bi-cameral. The lower house is called the Chamber of Deputies and the upper chamber, the Senate. The Senate consists of 314 members. They are chosen by a process of indirect election, from two to eight per *Department*. The Electoral college for each *Department* is composed of (a) the Deputies of the *Department* (b) the members of the General Council of the *Department* (c) the members of the District Councils within each *Department* (d) delegates from the communes or the Municipal Councils. The large number of communes in France makes it possible for their delegates to outnumber the other members of the electoral colleges and thus control the elections. The senate has therefore been called 'the great council of the communes.'

No person is eligible for election unless he is at least forty years old. No other qualification, not even that of residence, is prescribed. The tenure is nine years. But all are not elected at the same time as one-third retires every three years. The French Senate is therefore a permanent assembly, never dissolved as a whole. The average age of a senator is about sixty. Many

Deputies frequently pass to the Senate. It contains many ex-ministers and therefore compares favourably with the lower chamber in talent and experience. But the system of indirect election and of partial renewal once in three years renders the Senate irresponsible to public opinion. It is a conservative body representing old ideas.

Except in regard to finance the two houses
Powers enjoy co-ordinate legislative powers.
Money bills shall first be introduced
in, and passed by, the Chamber of Deputies. The ministers are responsible to both the chambers, and the Senate may enforce responsibility by the same means as the Chamber. It can interpellate the ministers, hold formal inquiries into the executive administration and refuse supplies. Its consent is necessary for the dissolution of the Chamber. Even if a ministry may have a majority in the Chamber of Deputies, it must have the support of the Senate. Else it must resign.

In spite of this equality of powers expressly provided in the constitution, the Senate has limited itself to the humbler role of revision and is less influential than the Chamber. One reason is that the Chamber of Deputies as the directly elected popular house is invested with peculiar prestige and sanctity. Secondly, practical necessity has curbed the ambitions of the Senate as Cabinet government is impossible with two equally powerful chambers and as ministers must be responsible to only one house.

Deadlocks between the two houses have not been rare. With regard to money bills, it is now a well-established constitutional custom that the Chamber of Deputies should have the last word. If any of its budget proposals are objected to or turned down by the Senate and if they are passed a second time by the Chamber, the Senate must give way. In the case of other bills there are two alternatives. Committees appointed by each house meet in conference and discuss the question, but vote separately. If no agreement is reached, the will of the Chamber of Deputies will be more likely to prevail. The other alternative, a purely informal one, is for the minister in charge of the bill to carry it backward and forward until some common understanding had been reached.

Like the House of Lords, the French Senate has judicial functions. It may be constituted as a High Court of Justice to try either the President of the Republic or the Ministers and to take cognisance of attempts on the safety of the State.

To sum up, the French Senate is not such a helpless body as the British House of Lords, though in practice it is strictly subordinate to the Chamber. It renders valuable service in the case of over-hasty legislation by the lower house. If it realises that the Chamber has embarked on a course of legislation owing to popular clamour, it quickly shelves the measure, or by its leisurely procedure effectively kills it. In the opinion of Bryce no other legislative body has in

modern times shown a higher average standard of ability and knowledge among its members.

The Chamber of Deputies is elected for four years by manhood suffrage. French citizens with full civil and political rights who are at least twenty-one years old and who have resided at least six months in any one commune or town are eligible to vote. Candidates for election must be at least twenty-five years old. Since 1928, election takes place in single member constituencies as in Great Britain. There are at present 615 deputies.

The Chamber assembles every year on the second Tuesday in January and should sit at least five months in the year. The President is bound to convoke it on the advice of his ministers or if demanded by one-half of its members. At all ordinary sessions it is summoned by its own president. Prorogation does not put an end to pending bills as in the British House of Commons. As the term is fixed for four years irrespective of changes of policy and ministers, the Chamber exercises an undesirable power over the cabinet of the day, and may even defy public opinion for the time being.

The French parliamentary procedure differs from the English one in several respects.

Contrast with England, (i) As observed before, ministers have a right to be heard in either chamber and even departmental officials are permitted to speak in defence of their measures. (ii) The President of

the Chamber unlike the Speaker of the House of Commons, remains a politician and may even quit the chair to take part in debates. He has an eye on the Republican Presidency or the Prime Ministership and hence cannot be absolutely impartial. (iii) The Chamber is divided into twenty-one Commissions each having about 40 members chosen annually by each political group in proportion to its size. Every bill introduced into the Chamber is referred to the appropriate Commission and may be altered by it. Each Commission chooses from among its members a Reporter. The Reporter may call expert witnesses, ministers and civil servants to give testimony and it is the bill as reported by him that is discussed by the Chamber. He is in charge of the bill and not the minister as in England. This method reduces to a nullity the responsibility of the ministry in legislation, but has not so far produced any great dissatisfaction, as generally the Reporters work in co-operation with the ministers.¹ (iv) The most important of these commissions is that of the budget. The Minister of Finance prepares the annual budget with the estimates received from his colleagues as his basis and makes his own proposals for raising revenue and introduces the budget in a speech. The Chamber then refers it to its budget Commission. The latter body at once appoints a number of sub-committees which consult freely and make extensive enquiries

¹ Most of these details of organisation hold good in the case of the Senate also.

of ministers and experts. The Commission acts independently of the Minister of Finance and may even insert or strike out or increase items. In the subsequent debate in the Chamber on the budget as revised by the Commission, the Reporter steers the bill and the Minister of Finance merely plays second fiddle, in marked contrast to the procedure in Great Britain where the Chancellor of the Exchequer is in entire charge of the finance bill.

The audit of accounts is left to a special court known as the Court of Accounts. It carefully examines the State Accounts at the end of the financial year and exercises jurisdiction over all officials who are charged with the collection and expenditure of public revenues. It makes its report to the President who by decree appoints a committee of both the Chambers and the Court of Accounts. This committee finally presents a full and elaborate report to the Parliament.

The Commissions can also control the executive, for they can enquire into the work of any department, summon its officials and subject its actions and proposals to severe criticism. Experience has given them the status of specialists and they therefore try to direct the departments with impunity.

(v) The right of question and interpellation is freely exercised by the Deputies to call the Ministers to account. Questions may be asked orally or in writing. After the Minister has given his answer, the Deputy who has pro-

posed the question has the right to reply. No further debate is allowed. But the French Deputy does not consider the question a sufficiently powerful instrument of control, and resorts to the interpellation on important occasions. An interpellation must always be in writing and handed to the President of the Chamber who after reading it passes it on to the concerned Minister, or to the Prime Minister if it refers to general policy. The Chamber then fixes a day for debate. On that day the Deputy responsible for the interpellation opens the discussion, the Minister replies and a general debate may ensue, at the end of which a vote is taken. The decision is practically a judgment of the Chamber on the Ministry. The Government resigns on an adverse vote, and many cabinets have fallen as the result of interpellations. This is a favourite method of defeating a Ministry and gives the individual Deputy tremendous power. Though condemned by foreign observers like Lowell, the interpellation is justified and even extolled by French authorities as the best weapon of minorities.

(vi) For every Bill, there are only two readings.

Methods of voting A member wishing to speak should get his name entered in the Secretary's list. Though permitted to speak from their seats, Deputies always choose to address from the tribune, a raised platform placed below the chair of the President and facing the concentric rows of seats on which members sit—an arrangement which strongly tempts the speakers to indulge in oratory and

declamation. There are four methods of voting, show of hands, standing up, public ballot and ballot at the tribune. If the show of hands is indecisive, the Ayes and the Noes are successively called to stand. If even then the secretaries do not agree on the result, the public ballot is resorted to. Each member has in the desk behind his seat a number of ballots (voting papers) some white, some blue, with his name printed on them. The white ballot stands for Aye and the blue for No. As the urn or the ballot box is taken round, each member deposits his ballot. Proxy voting is allowed. An absent deputy may ask one of his colleagues to cast his ballot into the urn. This has given rise to abuses. If the Chamber is dissatisfied with the result of this ballot, each deputy is called by name. He has to go to the tribune and hand his ballot to the secretary. No proxy voting is allowed now. The number of votes deposited in the urn is registered by a mechanical apparatus.

THE JUDICIARY.

In France Private law is different from Public law and there are two sets of courts to deal with them which are practically independent of one another.

- (i) In each canton there is a court presided over by a Justice of the Peace. It takes cognisance of civil cases involving small amounts and of petty criminal offences. The judge always tries to effect a friendly settlement.
- (ii) Next in the hierarchy comes the Court of First Instance. It consists of a President and not less than two other judges. It deals with all kinds of civil

cases. On its criminal side it is known as the 'Correctional Court'. Its jurisdiction is confined to one *Département*. (iii) The Court of Appeal comes next in rank. The total number of such courts is twenty-five and the jurisdiction of each extends over one to five *Départements*, and its work is limited to the hearing of appeals. It is composed of five judges and divided into three chambers, (a) a Civil Chamber (b) a Criminal Chamber (c) an Accusation or Indictment Chamber. (iv) The Court of Assize is set up periodically in the important provincial towns. It is the chief criminal court of France and consists of three judges. The President is nominated by the Minister of Justice and the two other judges are chosen from the Court of Appeal or the Court of First Instance. This is the only court in the French judicial hierarchy which makes use of the jury. But the function of the jury is merely to decide the fact of guilt. (v) The Court of Cassation is the apex of the French judicial system. It sits in Paris and has three sections, each with a President and fifteen judges. It has two special features. If it disagrees with the decision of the Lower courts, it does not give any judgment to that effect, but merely remits the case to the former courts for fresh trial. Secondly, the decisions of this court are not legally binding on Lower Courts.

The principle of the separation of powers has been responsible for the existence in France of Administrative Tribunals which have jurisdiction in many matters

Administrative
Courts

withdrawn from the competence of the ordinary courts. Complaints against officials must be brought before them, on the principle that the trial of a public servant in the ordinary courts for an administrative act would lead to the interference of the Judiciary with the Executive. In most continental countries a position of privilege is thus created for the servant of the State, and this has resulted in a special branch of law known as the Administrative Law.

In France the Administrative Courts consist of one Prefectoral Council in each *Department* and a Council of State for the whole country. The Prefectoral Council is the Court of First Instance. Each case after a preliminary official enquiry into the facts is heard by the Prefectoral Court. Its members are appointed by presidential decree. They should have had legal training or ten years' service in some government office. But their short tenure and small remuneration do not attract the best type of men.

The Council of State, on the other hand, stands high in public esteem. Its composition renders it independent of the executive power. Besides the Minister of Justice who is its nominal president, twenty-one representatives of the several ministries are members of this council and are called 'councillors in special service'. But the latter are excluded from it when cases against officials are heard. There are thirty-five professional members called 'councillors in ordinary service' and

these alone act as judges. They are appointed by a decree of the President. Half of them must have had considerable experience in important positions connected with the Council and the other half are either practising lawyers of repute or men employed in the higher ranks of the administrative service.

The Council of State hears appeals from the Prefectoral Councils and also exercises original jurisdiction by annulling administrative acts in certain cases. Its procedure is simple, expeditious and inexpensive. The Council also advises the Ministry on administrative questions and ordinances.

In order that the Executive may not force cases into the Administrative Courts when doubts of jurisdiction arise, a Court of Conflicts^{The Court of Conflicts} has been set up. Its composition ensures impartiality. The Minister of Justice is the president. Three members are chosen by the Councillors of State from among themselves and three others similarly chosen from the Court of Cassation and two by the other seven. The term is three years. Re-election is allowed. In fact the same judges are re-elected for a pretty long time.

Several writers taking the cue from Dicey have criticised adversely the system of Administrative Law and Administrative Courts of France. It is said that under it the Executive are the arbitrary judges of their own conduct and that it does not sufficiently protect the

rights of private citizens, as the 'Rule of Law' does in England. But during the last fifty years great improvements have been effected. The Administrative Courts of France have now a settled procedure and a coherent body of case law to guide them. The French citizen of today has as good a protection against official oppression as the Englishman and in some respects has even larger guarantees. Opinion about the French system seems to be veering round and there are many today who even claim a superiority for it as against the too technical procedure and the intolerable abuses in the administration of the common law in England and America. Dicey himself modified his views on *droit administratif* and wrote later, "France has with undoubted wisdom more or less judicialised her highest administrative tribunal, and made it to a great extent independent of the Government of the day. It is at least conceivable that modern England would be benefited by the extension of official law. Nor is it quite certain that the ordinary law courts are in all cases the best body for adjudicating upon the offences or the errors of civil servants. It may require consideration whether some body of men who combined official experience with legal knowledge and who were entirely independent of the Government of the day, might not enforce official law with more effectiveness than any Division of the High Court."¹

¹ See *Law of the Constitution* (Eighth Edition), Introduction p. xlviii.

In England parties are well organised and have a definite programme and policy by which they stand or fall not only in Parliament but in the country also.

Party Organisation

In France on the other hand there are no less than ten political groups, of which two only, the Unified Socialists and the Radical Socialists, have a code of discipline for acting together within the Chamber. The French group system is confusing to the electors and therefore loses in representative character. The Ministry is compelled to bargain with the several groups in order to maintain itself in power. It becomes "bound hand and foot to the demands of the component groups, for it has not that most necessary retaliatory weapon, the threat of dissolution. Every vote is important, therefore a lively traffic in official jobs and favours is carried on. This means weak government and slack administration."¹

Another characteristic feature of the French party system is the absence of great parliamentary leaders whom the rank and file of the several groups willingly follow. The moment a deputy or senator displays extraordinary ability and manages to become the president of his group, he is an object of jealousy and envy, and his enemies try all means to discredit him. Even his colleagues and adherents play for their own hand and do not think it their duty to render him any allegiance.

¹ Finer, *Foreign Governments at work*, p. 32.

Again though the members of a group meet together under their chairman to discuss how they should decide and vote on particular issues, no organisation exists like the English 'Whip' system to bring them up to the Chamber to vote in a division, except among the Unified and Radical Socialists.

But during the last twenty years there have been momentous changes. The chaotic system of parliamentary group is passing away, and by a process of consolidation a party system on the English and American model is being developed. In close relationship with parliamentary groups, are elaborate party organisations in the country, national in scope, holding annual congresses, with central and local committees and nomination machinery. The organisation of the Socialist-Republican party may be taken as a typical one. Members pay a small annual subscription and receive the party card. The local groups in each department form a federation and send delegates annually to the national congress. An administrative committee composed of the parliamentary groups, nine members elected by the congress and one delegate from each departmental federation, meets every three months. It appoints an executive committee of fifteen members or a bureau. Candidates must subscribe to the party platform. Their nominations must be confirmed by the appropriate federal committee, and after election they are responsible to the federation for their political conduct.

CHAPTER XIII

THE UNION OF SOUTH AFRICA

THE Constitution of the Union of South Africa is contained in the South Africa Act of 1909 passed by the British Parliament. Features of the constitution

Prior to this Act, the four colonies of Cape Colony, Natal, the Transvaal and the Orange River Colony had each a responsible government of their own. Trade and tariff difficulties, the desirability of common arrangements for defence and the danger of conflicting policies with regard to the treatment of the natives led to the recognition of the need for union. An inter-colonial conference met at Pretoria in May 1908, and suggested to the Colonial Legislatures the sending of delegates to a National South African Convention "to consider and report on the most desirable form of South African Union and to prepare a draft Constitution." The delegates met at Durban on October 12, 1908, and prepared a Draft Bill to be placed before the Colonial Legislatures. After various difficulties and delay, the South African Constitution was accepted by each of the four colonies by June 1909. It was then submitted to the Imperial Parliament in London and was passed by it on 20th September, 1909.

Under the Constitution the four contracting colonies ceased to be States and were united on May 31, 1910, "under one government in a legislative union", under the name of the 'Union of South Africa' and became self-governing provinces of the Union under the names of the Cape of Good Hope, Natal, the Transvaal and the Orange Free State.

The South African Constitution is remarkable among Confederate constitutions. In all previous Confederate constitutions the constituent states were most eager to maintain their sovereign rights. But in the South African Constitution the colonies agreed to the extinguishing of their sovereign rights and were reduced to the position of administrative provinces.

The Constitution bears strong resemblances to a federal state. It is the result of a treaty among the different colonies. Certain powers are expressly reserved under the Constitution to the Provincial Councils. The Senate of the Union is so constituted as to give effect to the principle of equality among the component units. Even in the allocation of federal business, recognition was accorded to the provinces: Pretoria was made the administrative Capital, Cape Town the seat of Parliament, while Bloemfontein contained the headquarters of the Supreme Court, Appellate Division.

But what differentiates the South African Constitution and its Legislature from the Federal Constitutions and Legislatures of the Dominion of Canada and the Commonwealth of Australia is the absolute supremacy of the Union Parliament. The Union

Legislature is a sovereign body with no limitations imposed on it in the interests of the component provinces and absolutely free to amend or repeal any clause of the Constitution.

Proposals of constitutional change shall be passed by both Houses of Parliament sitting together and at the third reading be agreed to by not less than two-thirds of the total number of members of both the Houses. A bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

The nominal head of the Executive is the Governor-General appointed by the king as his representative for a period of five years on the advice of the Union Government. The Governor-General always acts with the advice of the Executive Council of the Union, as the King does with the advice of the British Cabinet.

The Governor-General may appoint officers not exceeding ten in number to administer such departments of State of the Union as the Governor-General in Council may establish; such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Executive Council and shall be the King's ministers of State for the Union. No Minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament (Section 14).

Though the number of Executive Councillors is not to exceed ten, in practice one or two ministers "without portfolio" are appointed. The allocation of departments and the prescribing of departmental duties among ministers vary with each administration. Ministers are allowed to sit and speak in both the Houses but not to vote. The Executive Council is thus parliamentary and responsible. It rests on the principle of solidarity under the Prime Minister and works on the model of the British Cabinet both in legislation and administration.

As per Art. 142 of the constitution, a permanent
Civil Service Public Service Commission of three
members deals with the appointment,
discipline, retirement and super-annuation of public
officers. The members of the Commission hold office
for five years and are subject to the control of the
Governor-General in Council. The result is that many
undesirable appointments to the prejudice of English-
men appear to have been made, necessitating the ruling
of the Speaker of the House of Assembly that questions
should not be asked in respect of such appointments.
Employees of the railways, ports and harbours are
under the control of a Board of three Commissioners
with a Minister at its head. Here too the Dutch are
favoured, presumably on account of the political
advantages of such policy to the Ministry.

The Legislative power of the Union is vested in a
The Legislature Parliament consisting of the King,
a Senate and a House of Assembly.

The Governor-General has power to summon, prorogue and dissolve Parliament, either both Houses simultaneously or the House of Assembly alone. There shall be a session of Parliament once at least every year.

The Senate¹ is the Upper House of the Union Parliament. It consists of forty members, eight being elected from each Province and eight being nominated by the Governor-General in Council. The eight Senators from each Province shall be elected by the members for the House of Assembly for the Province in joint session with the Provincial Council, presided over by the Administrator and voting on the system of proportional representation with single transferable vote. They hold office for ten years or until the next dissolution of the Senate. The qualifications of a Senator are minimum age of thirty, five years' residence within the Union and ownership of land to the value of £500 at least. Only Union Nationals of European descent are eligible for membership.

Of the eight nominated Senators, four must be selected for their thorough acquaintance, by reason of official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa. Their terms of office are the same as those of the elected senators. The property qualification may be waived in their case.

¹ *The Constitutional Law of the British Dominions*, p. 208.

The powers of the two Houses are nominally equal except in the field of finance. The Powers Senate may not originate nor amend money bills nor any bills so as to increase any proposed charges or burden on the people. On the other hand, according to section 61, the bill appropriating money for the ordinary annual services of the Government shall deal only with such appropriation and must not contain other matter. The object of this provision is to maintain the full right of the Senate to reject a bill containing any unusual proposal.

In case of disagreement over a money bill, the Deadlocks Governor-General may summon a joint session of the two Houses in the same session after the Senate has rejected it twice, and it may be carried by a simple majority. In ordinary legislation if a bill passes the House of Assembly in two successive sessions, and is twice rejected by the Senate or so amended by it as not to meet with the acceptance of the lower House, the Governor-General, may, during the second session, convene a joint sitting, and the bill, if then passed by a simple majority of the members of both the Houses, shall be deemed to have been passed by Parliament.

As the strength of the Senate is only forty as against one hundred and forty eight of the Assembly, the latter will in all joint sessions, have its own way; and the South African Senate has not proved to be of any great importance. As Keith observes it was not

intended to be more than a house of review and in that capacity it serves fairly well.

Franchise is discriminatory. For white persons, the right to vote has been given since 1931 to all adults, male and female without any property qualification. But severe restrictions on natives and coloured races still continue. The vote can only be had by ability to write name, address and occupation and by twelve months' occupation of property worth £75 in the registration district, or three months' residence and earnings of £50 a year. The only exception in this respect is the Cape of Good Hope; and its franchise cannot be abolished or altered unless by a two-thirds majority of the total number of both Houses at a joint session.

Provinces have been divided into single member constituencies on the basis of population. The present House consists of 148 members, 58 for the Cape, 55 for the Transvaal, 18 for the Orange Free State and 17 for Natal. Only Union Nationals of European descent with five years' residence and qualified as registered voters are eligible for membership. A House of Assembly sits for five years from the date of its first meeting unless dissolved sooner.

Every House of Assembly shall choose a Speaker from among its members, to preside over all its meetings. He may be removed from office by a vote of the House, or he may

resign his office by writing to the Governor-General. At least thirty members constitute the quorum. All questions shall be determined by a majority of votes of members present, other than the Speaker or the presiding member, who shall however have and exercise a casting vote in the case of an equality of votes. If a member fails for a whole ordinary session to attend without the special leave of the House, he shall lose his seat.

At the head of each Province is an Administrator, appointed by the Governor-General in Council for five years. He can be removed before the expiry of his term only on cause assigned which must be communicated to Parliament. In the administration of the Province he is assisted by four persons selected by the members of the Provincial Council from among themselves or otherwise, on the system of proportional representation by the single transferable vote. They hold office until the election of their successors. These four persons and the Administrator form the Executive Committee for the Province.

The Administrator and any other member of the Executive Committee of a Province, not being a member of the Provincial Council, shall have the right to take part in the proceedings of the Council, but shall not have the right to vote.

Questions arising in the Executive Committee shall be determined by a majority of votes of the members

present and in case of equality the Administrator shall have a casting vote.

Legislative authority in each province is vested in a provincial council, members of which are elected by the same electors and in the same constituencies as the Parliament. Each province has as many councillors as its representatives in the Parliament, the minimum however being twenty-five. The term of each council is three years and it shall not be dissolved except by efflux of time.

The council must meet once in every year. It is summoned and prorogued by the Administrator. It chooses its own Chairman and frames its own rules of procedure, subject to the approval of the Governor-General in Council.

Its powers of legislation are strictly limited. It has power to make ordinances, subject to the approval of the Governor-General, in relation to any matter delegated by the Union; but the Parliament may at any time legislate on any of the topics conceded to the province, overriding the provincial ordinances. The provinces themselves have no safeguard against destruction by the Union.

The subjects assigned to the provinces are usually direct taxation (with reservation), local loans, education other than higher, agriculture (within certain limits), roads and bridges, markets and townships, hospital and poor relief, game and fish preservation, and

betting. The finances of a province are made up of subsidies granted by the Union and certain taxes and fees raised on its own account. In every province according to Section 92 there is one Auditor appointed by the Governor-General in Council and responsible to the Union Government. Every warrant of appropriation issued by the Administrator shall be countersigned by him.

To sum up, the provinces are in a position of naked inferiority and the authority of the Union Parliament is absolute over provincial finance and legislation. The South African Constitution therefore while making certain concessions to federal form does not contain a trace of the true federal spirit. The system has not worked well. A series of deficits in the budgets of the provinces, and their failure to develop their taxation resources lend support to the decision of General Hertzog in favour of unification.

Part IX of the Constitution provides for the admission to the Union of new provinces and territories and the division of any one of the four provinces into two or more. But so far none of the old provinces have been divided and no new territories admitted. The native territories, Basutoland, the Bechuanaland Protectorate and Swaziland are still administered by Resident Commissioners under the control of the High Commissioner. Southern Rhodesia has been given responsible government. But the Union Government still hope to bring under their flag the above territories

and are determined to adopt the Monroe doctrine for South Africa.¹

The essentially unitary character of the South African Constitution is further proved
 The Judiciary : by the powers and organisation of the
 Function Judiciary. The function of the Courts is mainly to interpret the law as in Great Britain and not to act as the guardian of the Constitution.

The Supreme Court of South Africa consists of
 Organisation two Divisions, an Appellate Division with its headquarters at Bloemfontein, and provincial and local Divisions in the four Provinces of the Union. The latter were, before the Union, the Supreme Courts of the several colonies.

The Appellate Division of the Supreme Court consists of a Chief Justice and four Judges of Appeal. Appeals lie direct to it from any superior court. The right to appeal to the Privy Council from the Supreme Court of the Union no longer exists, as the Statute of Westminster (1931) has given legal form to the right of the Dominions to choose their own final Court of Appeal.

The judges are appointed by the Governor-General
 Tenure in Council. Their remuneration shall not be diminished during their continuance in office. They shall not be removed except by the Governor-General in Council on an address from

¹ See Keith, *op. cit.*, pp. 371-376.

both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

The attitude towards the Boer War formed the the basis of the division of parties in Parties the Union. Botha and Smuts were the leaders of the Dutch South African Party, whose aim was the achievement of unity of feeling and equality between the British and the Dutch. The two other parties, the British Unionist Party and the Dutch Nationalist Party, were purely racial in their interests.

The death of Botha in 1919 and the rise of Labour in 1920 necessitated a rearrangement. The South African Party and the British Unionist Party merged into one under the leadership of General Smuts and obtained a great majority in the election of 1921 though they were opposed by the Nationalists and Labour. But the influence of Smuts declined and in 1924, the Nationalist-Labour coalition came to power with General Hertzog as leader. In 1929, the election gave Hertzog an absolute majority over the South African Party, while the Labourites, already broken into two fragments, were very poorly represented in Parliament and relegated to a subordinate position.

The Nationalist party is strongly racial in their policy. A section is markedly republican in sentiment opposed to Great Britain. Others demand the liberal use of patronage to replace British officers by the Dutch and insist on bi-lingualism, forcing the English to study Afrikaans, a debased form of Dutch.

The situation has been further complicated by the rise of a group in Natal whose aim is to secede from the Union if the Constitution cannot be revised on a federal basis, while General Hertzog is inclined towards further unification by abolishing the Provincial Councils. If South-West Africa, now administered by the Union of South Africa under a Mandate from the League of Nations, were to form part of the Union, and become a fifth province, a new disturbing element would be added; for the Germans, on account of their solidarity, would be a hard nut to crack and might hold the balance between the existing parties.

CHAPTER XIV.

THE IRISH FREE STATE

THE legislative union of Great Britain and Ireland was dissolved by the Anglo-Irish treaty of December 6, 1921. Twenty-six of the thirty two Irish Counties were constituted into the Irish Free State, the remaining six being placed under a separate Parliament in Belfast. In September 1922, the Provisional Parliament of the Irish Free State met as a Constituent Assembly to frame a Constitution. The Constitution as adopted by the latter was enacted by the Provisional Parliament on October 25, 1922, and by the British Parliament on December 5, and came into immediate effect after Royal Proclamation.

The Constitution declares that the Irish Free State is a co-equal member of the Community of Nations forming the British Commonwealth of Nations and that all powers of government, and all authority, legislative, executive and judicial in Ireland are derived from the people of Ireland. (Articles 1 & 2.)

Articles 6 to 10 constitute a Bill of Rights. Liberty of person and the dwelling of the citizen are held inviolable. Free-

dom of conscience and the free profession and practice of religion are guaranteed to each citizen, as well as the right of free expression of opinion, and the right to assemble peacefully and without arms and to form associations or unions for purposes not opposed to public morality. All citizens have the right to free elementary education. They have also the right to prompt enquiry into the cause of detention and to release when it is unlawful. No law shall be made to endow any religion. At the same time no discrimination shall be made as respects State aid, between schools under the management of different religious denominations. Trial by jury is also guaranteed. But these rights are subject to the legislation of the State and may be drastically limited in times of crisis.

Another feature of the Irish Free State Constitution is what in other constitutions rests on conventions and constitutional usages, for instance the responsibility of the ministry to the Lower House and resignation on loss of confidence, has been written into the constitution itself. (*Vide* Articles 53 & 54.)

Article 45 of the Constitution is remarkable for the provision it makes for vocational representation. "The Oireachtas (Legislature) may provide for the establishment of Functional or Vocational Councils representing branches of the social and economic life of the Nation. A law establishing any such Council shall determine its powers, rights and

iii. Legal basis of constitutional usages

iv. Provision for Vocational Councils

duties and its relation to the government of the Irish Free State."

The Ministerial system outlined in Articles 55 & 56 offers a novel and curious solution to the problem of the relation of the Executive to the Legislature, though in actual practice it has proved to be unworkable. The system of Proportional Representation for elections to the Lower House seems to have given general satisfaction.

Article 50 of the Constitution which provides for constitutional changes has been amended thrice. As it now stands, it reads, "Amendments of this Constitution may be made by the Oireachtas, but no such amendment, passed by both Houses of the Oireachtas, after the expiration of a period of sixteen years from the date of the coming into operation of this Constitution, shall become law, unless the same shall, after it has been passed or deemed to have been passed by the said two Houses of the Oireachtas, have been submitted to a Referendum of the people, and unless a majority of the voters on the register shall have recorded their votes on such Referendum, and either the votes of a majority of the voters on the register or two-thirds of the votes recorded shall have been cast in favour of such amendment. Any such amendment may be made within the said period of sixteen years by way of ordinary legislation."

Thus the provision to make constitutional changes difficult of adoption by prescribing a referendum and the approval by a majority of the voters or two-thirds of the votes cast, has been kept in abeyance. Till 1938 at any rate the constitution can be amended by the ordinary process of legislation. But it may be doubted if the referendum would ever be adopted for constitutional amendment in the Irish Free State as it would render the constitution particularly rigid.

The executive authority of the Irish Free State is vested in the King and shall be exercisable by his representative "in accordance with the law, practice and constitutional usage, governing the exercise of the Executive Authority in the case of the Dominion of Canada", in other words, in accordance with the advice of the Irish Ministers of State. The Representative of the Crown is styled the Governor-General and is appointed by the King on the recommendation of the Irish Free State Government for a period of five years.

Real power is with the Executive Council. It is responsible to Dail Eireann (the Lower House). It shall consist of not more than twelve nor less than five Ministers appointed by the Governor-General on the nomination of the President of the Executive Council (the Prime

Amendment by
Ordinary legisla-
tion till 1938

The Executive:
Governor-General
Nominal head

Executive Coun-
cil: Prime Minister
chosen by the
House

Minister) with the assent of Dail Eireann. The members of the Executive Council shall be members of the Dail, except one who may be a member of Seanad Eireann (the Upper House). The President of the Council shall be selected by the Dail, the Governor-General having no alternative but to confirm the choice.

According to Article 54, the Executive Council shall be collectively responsible for all matters concerning the Departments of State administered by its members and it shall meet and act as a collective authority.¹ Every minister shall have the right to attend and be heard in both the Houses. On his appointment as Minister, a member of the Dail need not resign or seek re-election. (Article 58.)

The President and the Ministers nominated by him, shall retire from office, should he cease to retain the support of a majority in the Dail, but shall however continue to carry on their duties until their successors shall have been appointed. It is expressly forbidden to the Governor-General to dissolve the Dail on the advice of a Ministry which has ceased to retain the support of a majority in the Dail. This is a serious departure from the well-established precedent of a defeated Ministry claiming the grant of a dissolution of the legislature to ascertain the will of the electorate.

¹ Articles 55 and 56 provide for the appointment of Ministers, not members of the Executive Council and not jointly responsible and serving for a fixed term. But the experiment failed and since 1927 has not been repeated, though it is still possible under the law.

A Board of Civil Service Commissioners has been constituted to control appointments to the public service. The Commissioners hold office at the pleasure of the Executive Council. Further, the head of any Department of State with the consent of the Finance Minister may withdraw certain posts from the Board's control. However the standard of selection seems to be high, and no complaints have arisen regarding the political activities of the Civil Service Officials.

The Legislature known as the Oireachtas consists of the King and two Houses, the Chamber of Deputies (otherwise called Dail Eireann) and the Senate¹ (otherwise called Seanad Eireann). The sole and exclusive power of making laws for the peace, order and good government of the Irish Free State is vested in the Oireachtas.

To be eligible for membership to the Senate, one must be at least thirty years of age and eligible for election to the Dail. The members must be citizens who have done honour to the Nation by reason of useful public service or represent important aspects of the Nation's life because of special qualifications or attainments (Article 30). A person may not be a member of both Houses.

¹ The proposal to abolish the Senate was not accepted. The Governor-General's Office has been abolished.

The term of office of a Senator is normally nine years. One third of the members retire every three years and their places are filled by an election at which the electors shall be the members of Dail Eireann and the members of Seanad Eireann voting together on principles of Proportional Representation (Amendment 6, 1928). Voting is by secret ballot, and before each election a panel of candidates is prepared in the manner prescribed by law.

In case of death, resignation or disqualification of a member, his place shall be filled by an election at which the members of the two Houses shall sit and vote together in the ordinary way.

Every bill initiated in and passed by the Dail shall be sent to the Senate and may, unless it be a Money Bill, be amended in the Senate, and the Dail shall consider any such amendment.

Every Money Bill shall be sent to the Senate for its recommendations and shall, within twenty one days, be returned to the Dail which may pass it, accepting or rejecting all or any of the Senate's recommendations. If not returned within twenty one days, it shall be deemed to have been passed by both the Houses. (Article 38.)

The authority to decide what is a money Bill is vested in the Chairman of the Dail. But two-fifths of either House or a majority of the Senate present and

voting at a sitting of the Senate may demand a reference to a Committee of Privileges, sitting under a senior judge of the Supreme Court, whose decision shall be final.

With regard to any ordinary Bill passed and sent up by the Dail, if the Senate within a stated period rejects it or passes it with amendments to which the Dail does not agree, the Lower House may within one year from that stated period, pass a definite resolution and send such Bill again to the Senate. If the Senate does not within sixty days agree to it or passes it with amendments to which the Dail does not agree, the Bill shall be deemed to have been passed by both Houses.

A Bill may be initiated in the Senate, and if passed by it shall be introduced into the Dail. If amended by the latter, the Bill shall be considered as a Bill initiated by the Dail.

Thus the functions of the Senate of the Irish Free State are restricted. It is more a recommending and delaying body than an Upper House of any influence or power. It has no judicial function.

Franchise for the Dail is universal. All citizens of the Irish Free State without distinction of sex, who have reached the age of twenty one shall have the right to vote, subject of course to certain usual limitations. No voter may exercise more than one vote, and the voting

Dail Eireann:
The Chamber of
Deputies: Fran-
chise

shall be by secret ballot. Every citizen twenty one years old, not otherwise disqualified shall be eligible to become a member of the Dail. The present chamber consists of 153 Deputies. The country has been divided into thirty constituencies on the basis of population, each electing three to nine members on the principle of proportional representation. Redistribution of seats takes place once in ten years. Every University in the Irish Free State existing in 1922 shall elect three Deputies.

The duration of the Chamber has been fixed by law to be five years. But it may be dissolved at any time on the advice of the Executive Council. Parliament shall hold at least one session each year. Each House shall elect its own Chairman and Deputy Chairman. The out-going Chairman of the Dail shall be deemed without any actual election to be elected at the ensuing general election as a member for his old constituency. Thus what is a convention in Great Britain has been put on a legal basis in the Irish Free State.

The Dail shall appoint a Comptroller and Auditor-General who shall control all disbursements and shall audit all accounts of moneys administered under the authority of Parliament and shall report to the Dail at stated periods. He shall not be removed except for stated misbehaviour or incapacity on resolutions passed by the two Houses. He shall not be a member of the Legislature.

The Courts established by the Legislature consist of a Court of Final Appeal called the
 The Judiciary: Supreme Court and the Courts of
 The Supreme First Instance. The latter include a
 Court High Court, a Court of Criminal
 Appeal, a Central Criminal Court and a Circuit Court
 and a District Court.

The Supreme Court consists of the Chief Justice
 and two other judges and has appellate
 No appeal to the Privy Council jurisdiction from all decisions of
 the High Court. The decision of the
 Supreme Court in all cases shall be final and conclusive
 and shall not be reviewed by any other authority.
 "No appeal shall lie from a decision of the Supreme
 Court or of any other court in the Irish Free State to
 His Majesty in Council and it shall not be lawful for
 any person to petition his Majesty for leave to bring
 any such appeal." (Amendment 22, dated 16-11-33.)

The High Court consists of a President and five
 ordinary judges. It is invested with
 The High Court decides validity of a law full original jurisdiction in, and
 power to determine, all matters and
 questions whether of law or fact.
 It has also power to decide the question of the validity
 of any law having regard to the provisions of the
 Constitution, subject of course to the appeal to the
 Supreme Court.

The Judges are appointed by the Governor-General
 on the advice of the Executive Council and shall not be

removed except for stated misbehaviour or incapacity, and then only by resolutions passed by both the Houses of the Legislature. The Constitution expressly enacts in Article 69 the maxim of the independence of Judges.

The question of accepting or rejecting the Anglo-Irish Treaty of 1921 brought about a serious split. Cosgrave was the leader of the party which favoured acceptance. He triumphed by a small majority over his rivals and was in power till 1932, though he had to rely on the co-operation of the independent members and those who represented the interests of the farmers. But in the election of 1932, the opposition party (Fianna Fail) led by De Valera succeeded with the aid of Labour in securing the majority of seats. Its aims are complete independence of the Irish Free State and a thoroughly republican Constitution.

PART II

CHAPTER XV

INTRODUCTORY: FEDERALISM—CONDITIONS AND FEATURES

FEDERALISM is the outcome of the necessity of reconciling national union with the autonomy of States. A federal State may be defined as one in which a central authority represents the whole in external affairs and acts on behalf of the whole in internal matters of common interest, and in which there are also local authorities with powers of legislation and administration as defined in the Constitution.

The conditions which may bring about a federal union are generally three. In the first place there must be a group of States in close contiguity, so far connected by ties of blood, language, religion or political traditions as to desire union. Secondly, the individual citizen must feel a stronger allegiance to his own State than to the central authority newly created. A federal citizen's shirt is more important to him than his coat. It is this feeling of divided allegiance that keeps alive the federal spirit. Thirdly, there must not be any great inequality among the federating units. The presence of one or two dominant states in a union cannot but

Conditions precedent

ultimately spell disaster to the weaker members, as the example of the German Confederation of the nineteenth century has proved. Among the causes of such a desire for union may be mentioned the danger of tyranny or invasion from foreigners or subjection to a common sovereign (*e.g.*, Switzerland and the United States), racial conflicts (*e.g.*, Canada) and the need for a common fiscal and commercial policy (*e.g.*, Australia).

	A federation is the result of an agreement among the federating States. The agreement is enshrined in a written instrument.
Features	
The Constitution	is thus invested with a special sanctity and should not be lightly interfered with. Amendments are therefore rendered difficult of adoption by prescribing either some extraordinary machinery or a special method for effecting constitutional changes.
Rigidity of Constitution	
	Federal constitutions are consequently rigid.

This problem of amendment raises important issues in every federal State. The written constitution is a sort of guarantee of the powers allocated to the States. If it could be amended easily by the central authority, the interests of the States would be jeopardised. On the other hand if the States are given a real share in the process of amendment as in the United States of America, the central authority may be deprived of an effective instrument to fulfil its urgent needs. The ultimate reference to the people by means of Referendum as in Australia, may prove even worse in its

results, as the uninformed electorate is least fitted to decide far-reaching proposals of constitutional change.

A second feature is the allocation of powers between the central authority and the component States. The general principle is that powers of common importance should be given to the former and that purely internal matters must be left to the management of the different states. In giving effect to this principle, two methods may be followed. The powers to be allotted to the federal government may be expressly recited, the residue being left to the States, or the powers of the latter may be enumerated leaving the competence in other matters to the central authority. This is a vital point in federation, for any definition means limitation, and the nature of a federal constitution must vary according as the province of the National Government or that of the States has been defined in the constitution. The United States of America has adopted the former method, and the Dominion of Canada the latter.

But whatever method may be adopted and however carefully the province of each authority may be demarcated, disputes are sure to arise on questions of jurisdiction and competence. State independence and progressive centralisation are incompatible and must give rise to conflicts. The American Constitution broke down over the question of the rights of property of the slave owners of the Southern States. Further the original distribution of powers in a federal State will be found inadequate with the march of time. The ex-

ample of the United States proves that a continual adjustment is necessary to suit the interests of a developing state. A certain amount of elasticity is absolutely essential, and under the "doctrine of implied powers", the Supreme Court of the United States has increased the competence of the Federal Government. It is in this sense that federalism must be considered as a stage on the road to unity.

A subsidiary feature of a federal constitution that is the direct consequence of the division of powers is the dualism of law and a complete reduplication of political machinery. For the federal government not only acts on the component States, but has direct relations with their citizens.

A third noteworthy feature of a federal constitution is the importance of the role of the Judiciary. The normal function of a judge is to interpret the law, but in a federal State he is the guardian of the Constitution as well. As the federal State is founded on a contract, some authority is necessary to hold each party of the contract to its terms. The courts are therefore vested with the power of deciding if any act is within the competence of the Central Legislature or that of the States. Thus the federal judiciary, under cover of judicial interpretation, may substantially alter the constitution as in the case of the United States.

Interpretation of
constitution

CHAPTER XVI

THE UNITED STATES OF AMERICA

PRIOR to 1775 the thirteen States which later came to be known as the United States were
Origin and Features of the Constitution British Colonies, each having its own separate legislature and governor. On July 4 of that year, they declared themselves sovereign, free, independent States, absolved from all allegiance to the British Crown. The need for concerted action led them to draft certain Articles of Confederation by which they entered into a firm league of friendship with each other for their common defence and security of their liberties, and delegated certain powers to a common authority, the United Congress. These powers were later on found inadequate, and by a resolution of the Congress, a Convention of delegates from the several States was held at Philadelphia on May 25, 1787 with George Washington as its President.

The Convention decided to draw up a new constitution altogether which, when drafted, should be submitted for ratification to the people themselves in each of the States. Accordingly the new Constitution (September 17, 1787) was approved by Conventions in the majority of the States and came into force on March 4, 1789. Some of the State Conventions, while transmitting their resolutions of acceptance of the Constitu-

tion, proposed certain amendments which were ultimately adopted.

The Constitution of the United States is the greatest federal constitution of the world.

i. Constitution derived from the People It has served as a pattern for federal democracy. A unique feature is that it is derived from the people. The preamble states, "We, the people of United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." The basis of the American constitutional system is therefore the right of the people "to make and alter their constitution of government."

It is a perfectly business-like document. There is no pretentious setting forth of principles or liberties in any "Bill of Rights", as in the original constitutions of some of the States.¹ It straightway proceeds to create the chief organs of government and define their powers, as if the principles were taken for granted. Even the first eight amendments to the Constitution which were adopted on the express wish of certain States were essentially of a practical character.

¹ Cf. *The Federalist*, p. 439.

It is the briefest and the most compact written instrument dealing with the fundamental organisation of government.

iii. 'A corner-stone, not a complete building' "The Constitution itself is not a complete system; it takes none but the first steps in organisation. It does little more than lay a foundation of principles. It provides with all possible brevity for the establishment of a government in several distinct branches, executive, legislative and judicial powers Here the Constitution's work of organisation ends, and the fact that it attempts nothing more is its chief strength. For it to go beyond elementary provisions would be to lose elasticity and adaptability and there can be therefore no question that our Constitution has proved lasting, because of its simplicity. It is a corner-stone, not a complete building it is a root, not a perfect vine."¹

The Constitution is one of checks and balances.

iv. Checks and Balances The component States are balanced against the National Government; the House of Representatives is set off against the Senate and the Senate against the House; the President is balanced against Congress and Congress against the President; and the Judiciary is balanced against all these. It is a wonder how such a Constitution has been a success in its actual working. This is because of the sound practical sense of the

¹ Wilson, *Congressional Government* (15th edn.), pp. 8-9.

Americans in interpreting their Constitution not as a mere lawyer's document, but as "a vehicle of life".

The National Government possesses only such powers as are expressly granted to it in the Constitution. The powers of Congress are enumerated under eighteen heads:—

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several States and with the Indian tribes.

4. To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post-offices and post-roads.

8. To promote the progress of science and useful arts by securing for limited times to authors and

inventors the exclusive right to their respective writings and discoveries.

9. To constitute tribunals inferior to the Supreme Court.

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

11. To declare war, grant letters of marque, and reprisal, and make rules concerning captures on land and water.

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

13. To provide and maintain a navy.

14. To make rules for the government and regulation of the land and naval forces.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

16. To provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by concession of particular States and

the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful building; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof. (Art. I, section 8.)

Section 9 prohibits Congress from doing certain acts. Section 10 similarly prohibits certain powers to the individual States and in these cases Congress has got an auxiliary power to legislate.

The residue of powers lies with the States or the people. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." (Art. X, Amendment.)

In short, while the National Government is supreme in specified matters of common interest, such important functions as the maintenance of law and order, local government, organisation of civil and criminal justice, education and public health, police and militia are all vested in State Governments. In case of disputed jurisdiction, the burden of proof lies on the National Government. Unless it shows that the power in dispute has been granted to it under the Constitution the States are presumed to be in enjoyment of it.

All disputes between these two independent sovereignties are decided by the Supreme Court of the United States. It keeps each within its proper orbit and decides whether a power exercised is within the competence granted by the Constitution to the States or to the National Government. Its decisions serve to maintain harmony between the two authorities.

Article V deals with amendment of the Constitution. Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the Constitution, or, on the application of the Legislatures of two-thirds of all the States, shall call a convention for proposing the amendments, which in either case shall be valid to all intents and purposes as part of the Constitution when ratified by the Legislatures of three-fourths of the several States or by conventions in three-fourths thereof, as the one or other mode of ratification may be proposed by Congress.

All federal constitutions must be necessarily rigid, but the American Constitution is exceptionally so, as the process of constitutional revision is cumbrous and elaborate. Amendments to the Constitution have been consequently very few. Though nearly two thousand resolutions for constitutional change have been so far submitted to Congress, only twentyone amendments have been actually made. But this extreme difficulty of formal amendment has been overcome in practice by

judicial interpretation and by extra-constitutional methods and machinery. Thus in spite of its rigidity of form, the government of the United States has adapted itself to the purposes of the nation from age to age and the law of the Constitution has been extended to cover new facts and to meet new situations.¹

The State Governments

The United States is at present composed of 48 States. Each State has a written constitution which must be republican in form. The constitution derives its authority, not from Congress, but from the people of the State and is freely amended by them. It is superior to ordinary statutes, and far more detailed than the Federal Constitution. The constitution in most States contains a Bill of Rights and many miscellaneous provisions, besides a description of the framework of Government.

Each State has a legislature of two elective Houses (the Senate and the House of Representatives). The senators are generally elected for four years and the members of the Lower House for two. The powers of the two Houses are equal, except that in many States Money Bills must be introduced in the Lower House. The Senate sits as a court in cases of impeachment and has, in most cases, the power to ratify the appoint-

¹ Cf. Wilson, *Constitutional Government in the United States*, p. 193.

ments made by the executive head. The Legislature has power to deal with all matters not reserved for the National Government or falling within restrictions imposed by the State Constitutions. The Houses transact their work in standing committees.

The Governor is the executive head of each State.

He is directly elected by the people.

Governor and
Executive Officials
elected by the peo-
ple

The term of office varies from two to four years. He has command of the military forces, sees to the administration of law, recommends measures of

legislation. Except in two States, he has a veto upon legislation which may however be overruled by a two-thirds majority in both Houses. The important executive officials are not appointed by the Governor, but are directly elected by the people and are responsible neither to the legislature nor to the Governor. "Indeed it may be doubted whether the Governor and other principal officers of a State Government can even when taken together be correctly described as the 'executive', since the actual execution of the great majority of the laws does not rest with them, but with the local officers chosen by the towns and counties and bound to the central authorities of the State by no real bonds of responsibility whatever."¹

The judges, in most states are elected by the people

Elected judges

and in a few by the Legislature. In some they are also appointed by the

¹ Wilson, *The State* (Revised edition), p. 330.

Governor with the consent of the Senate. Their term varies from two years to a tenure of good behaviour.

Many of the State Legislatures do not command the confidence of the people, owing to corruption, log-rolling, influence of powerful corporations and the side-tracking of good legislation. Hence in such states provision has been made for the whole body of citizens to enact laws on the initiative of some among their own number, or to vote for or against bills passed by the Legislature. Besides the Initiative and the Referendum, a third peculiar feature of the American State Governments is that legislators, officials and judges elected by the people may be recalled (dismissed) by a popular vote before the expiry of their term.

Initiative, Referendum and Recall

The National Government

The Fathers of the United States Constitution consulted Montesquieu and Blackstone and thought it necessary to divide governmental power into three branches, legislative, executive and judicial and entrust them to three separate authorities.

The Americans were dead against an executive of the British Cabinet type as all multiplication of the executive was deemed dangerous to liberty. According to them unity and responsibility should go together. A one-man executive was to be preferred as responsibility could be easily brought home. Executive power was

Executive ;
The President

therefore vested in a President elected for a period of four years. A candidate for the presidency must be a natural born citizen, at least 35 years old, with fourteen years' residence in America. He is eligible for re-election, but convention has prescribed only one term of re-election.

The method of election is as follows: The people in each State choose a number of electors, equal to the number of Senators and representatives to which that State may be entitled in Congress. But the election is on party lines. Each of the two parties puts up a list of electors and the people vote for the one or the other of the two lists. The electors thus chosen from the several States elect the President and the Vice-President. But they have no choice as they had given their pledge to vote for the candidate put up by the party in the nominating convention held some months previously. In practice therefore, the President is the choice of the people.

The Vice-President is similarly elected at the same time. If the President dies, the Vice-President acts for the remainder of the term. Both the President and the Vice-President may be removed from office only by impeachment for treason and other high crimes.

It was the idea of the makers of the Constitution that "the Presidential Electors should be free from sinister bias." But this idea has not been realised in

practice owing to the intervention of party machinery. The Elector is now merely "a registering machine—a sort of bell-punch to the hand of his party convention. It gives the pressure and he rings. . . . A very simple and natural process of party organisation, taking form in Congressional Caucuses and later in nominating conventions, has radically altered a Constitution which declares that it can be amended only by the concurrence of two-thirds of Congress and three-fourths of the States."¹ The President is thus not the tribune of the people, not the head of the nation, but the leader of a party.

Powers Functions	and	<p>The powers of the President are, command of the army and the navy; grant of reprieve and pardon; making of treaties with foreign states with the assent of two-thirds of the Senate; appointments of ambassadors, ministers, consuls and judges with the approval of the Senate; approval of Congress bills. (He may return bills in which case Congress should pass them again by a two-thirds majority to over-ride the President's veto.)</p>
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The President shall from time to time give to Congress information of the state of the Union. These messages are of great importance as they lay down principles and indicate the lines on which legislation is necessary. He may on extraordinary occasions convene both Houses or either of them, and in case of disagreement between them with respect to the time of

¹ Wison, *Congressional Government*, p. 50.

adjournment he may adjourn them to such time as he shall think proper. He shall take care that the laws be faithfully executed. (Art. II, sections 2 & 3.)

In short, the President's power is real; he is 'an elected king who governs as well as reigns' during his term of four years. But everything depends on the personality of the occupant of the office and upon his interpretation of the clause in the Constitution regarding the faithful execution of the laws with which he is charged. If he shows himself worthy of his great position, "he draws to himself, as personifying the Nation, something of that reverent regard which monarchs used to inspire in Europe."¹

The only defect in his position is that he cannot in person lead the Legislature and "can exercise command only at long range and through deputies." Harmony and co-operation between the legislature and executive are rendered difficult. Congress legislation may be unrelated to the experience of the executive and wanting in coherence, while executive action may for the same reason lack vigour and energy.

In the execution of laws and the administration of business, the President is helped by Secretaries of State. They are the heads of departments and form his cabinet. They are chosen by him, though the appointments must be approved by the Senate. But they hold office during his pleasure and are responsible

¹ Bryce, *Modern Democracies*, Vol. II, p. 82

to him only. The President's Cabinet is not a political body. Though party services may sometimes have to be rewarded, the heads of departments are usually chosen for their business experience and ability and special fitness for administration.

THE LEGISLATURE—CONGRESS

The Constitution vests all legislative powers in Congress which consists of the Senate and the House of Representatives. The Senate was frankly intended to be a salutary check upon the more numerous democratic chamber.

The Senate as at first constituted represented the
 Senate: constituent states and was elected by
 Composition the State Legislatures. But by an amendment passed in 1913 indirect election was given up in favour of direct election by the people in each state. The Senate now consists of two members from each of the forty-eight States, ninety-six members in all, chosen by popular vote for six years. One-third retire every two years so that the Senate is a continuous body. Senators must be at least thirty years of age, must have been citizens of the United States for nine years and be resident in the States for which they are chosen.

Equality of representation was insisted on because of the fear of the smaller states being swamped by the larger ones. It was also intended to be a "constitutional recognition of the portion of sovereignty remaining in the individual States and an instrument in

preserving that residuary sovereignty.”¹ The position of the Senate as the guardian of the independence of the States has been consolidated by the constitutional provision that no State can be deprived of its equal suffrage in the Senate without its own consent.

Except in finance the Senate has co-ordinate powers with the House of Representatives. Any Bill (except a Bill to raise revenue) may be introduced in either House. As the American Executive does not lead the legislature, the Senate has a large share of legislative work to do. With regard to Money Bills, it has the same powers of amendment and rejection as it has in respect of ordinary bills. In practice it does not hesitate to amend Appropriation and Revenue Bills and to substitute its own proposals for those of the Lower House.

Conflicts between the two Houses are referred to a Conference Committee, composed of members of both Houses and appointed by the President of the Senate and the Speaker of the House of Representatives. The report of this committee is generally accepted.

Unless a bill is passed in identical form by the two Houses, it is not sent up to the President for his approval. He may return a bill to Congress, but as has been pointed out his veto may be overridden by the bill being passed again by a two-thirds vote in both Houses.

¹ *The Federalist* (Everyman's Library), p. 316.

Judicial The Senate has sole power to try cases of impeachment. In trials of all officers except the President, the Vice-President presides. If the President himself is impeached, the Chief Justice is required to preside over the trial. This function of the Senate is not an important one however.

Executive The most distinctive feature of the American Senate is that it has been invested with two most important executive functions. It has the power to ratify or reject all treaties made by the President with Foreign Powers, a two-thirds majority of the Senators present being required for ratification. The Senate is also entrusted with the power of confirming all appointments to higher offices made by the President. In practice, it does not interfere with the President's nomination of the members of his cabinet; but in regard to other appointments, especially of federal officers in each State, the Senate insists on having an effective share, and discusses and votes in camera. This function of the Senate has been condemned by several critics.¹

Organisation The Vice-President of the United States presides over the Senate. Its work is done in a number of Standing Committees. Every bill is referred to the appropriate committee. The Chairmen of these committees wield great influence and power. They keep in touch with the Executive, thus obviating to some extent the evils of the theory of the

¹ See Bryce, *The American Commonwealth* (Revised edn.), Vol. II, pp. 103-106.

Separation of Powers. Debate is not limited, as the small number gives scope for ample discussion.

The Senate is the most original and successful institution of the American Constitution. Its continuity, the longer tenure of its members, its compactness and its wide powers have been the cause of its superiority over the popular chamber. It exercises its large powers with great freedom and independence. It is admittedly a strong body of experienced statesmen and has usurped the place of authority in Congress.¹

The House of Representatives is composed of members elected for two years by the vote of the citizens, who are qualified to vote for the members of the most numerous branch of the legislature of their States. The number of representatives from each state depends on its population. The House consists at present of 435 members.

There is no franchise disqualification on account of race, colour or previous condition of servitude or sex. The electorate consists therefore practically of all citizens of both sexes over twentyone years of age. But the franchise is not universal, as several States have evaded it by imposing educational tests or property qualifications. For instance, in some States, the payment of taxes is necessary to qualify for the vote; in others ability to read, Massachusetts requiring 'ability to read English' In some Southern States voters may be required to give reasonable explanation

¹ A diametrically opposite opinion is held by Ostrogorski. Vol. II, p. 542, *et seq.*

of what they read. Several other methods have been adopted to circumvent the constitutional provision for universal franchise and especially to shut out negroes from it. Each state determines not only the electoral franchise, but also the method of voting and the distribution of electoral areas. The representative sends his resignation to the State Governor and not to the Speaker of the House; writs to fill casual vacancies are issued again by the State Governor.

Representatives must not be less than twenty-five years of age, must have been citizens of the United States for seven years and be resident in the States which they represent. No senator or representative can, during his tenure, be appointed to any *civil* office under the authority of the United States which shall have been created or the emoluments of which shall have been increased during such time; and no person holding any office under the United States can be a member of either House during his continuance in office. (Art. I, sec. 6.)

The House has the initiative in finance. It has the sole right to impeach the President and other higher officials. In legislation it has the same powers as the Senate. It has no executive functions.

The short tenure of membership and the large number of representatives have compelled the House to get through its work quickly. Rules of procedure are therefore much more stringent than in any other legislative assembly.

As there is no ministry to assume the leadership of the House and arrange its business, its organisation is left to various committees. These committees are about sixty in number and are the most distinctive feature of the American legislative procedure. These are appointed by the House and are composed of the members of the majority and minority parties proportionately to their strength in the House. Every bill introduced is sent to one of them. The committees hold their meetings in private. They may require the Ministers to appear before them and give their views on bills, but need not follow their advice or grant their requests. The Chairmen of some of these committees, especially of the Committees of Ways and Means and on Appropriations, wield greater power than the Secretary of the Treasury. The committees are 'miniature legislatures'.² They may or may not report the bills back to the House at all. When bills are reported back from the committees the proceedings on the floor of the House are merely formal. There is no full dress debate. Many bills find their burial in the committee rooms.

This system lends itself to dishonesty and corruption. The electorate cannot know who its legislators are. The Press cannot report the proceedings of the committees. Corrupt influence and log-rolling are facilitated. It cramps the Executive in its policy and actions, especially if the party opposed to the President happens to have a majority in either House. It gives no opportunity for ability to show itself. Lastly, bills

may get into the statute book without adequate discussion. "Altogether the committee system results in lack of single directing harmonising will in legislation; overlapping jurisdictions, disputes, and some inconsistency in the laws. Division of power means division and indefiniteness of responsibility; *the connection between public opinion and law is exceedingly difficult to trace through the whole maze of personality, interests and secrecy which enter into these legislatures of twenty-one.*"¹

Thus the American Legislature is unique. The initiative in legislation is in its hands, not with the Executive. It plans and devises in complete independence of those who are in actual charge of administration. Congress is an administrative council in several respects, and government is largely congressional.²

The Speaker of the House of Representatives, though formally elected by the House, is out and out a party man as his continuance in office or any other reward depends on the success of his party in the next election. He presides over the debates, maintains order, decides points of order and the question of priority of speakers, but he rules the procedure in the House in such a way as to get the measures of his party a favourable passage.

¹ Finer, *Foreign Governments at Work*, p. 69.

² Cf. Wilson, *Congressional Government*, pp. 10 & 11.

The Judiciary

The courts are 'the balance wheel' of the American constitutional system. They are intended to maintain a nice equipoise between citizens and government and between the different branches of government. They protect the individual citizen in the enjoyment of his rights and decide on the legality of governmental action. They are the guardians of the Constitution and have the power to settle all disputed questions of competency between the State Legislatures and the National Legislature. They hold each great branch of government to its allotted sphere and prevent encroachment. In other countries the courts must enforce whatever the Legislature enacts, but in America the powers of the Legislature are themselves defined in the Constitution and the decisions of the Judiciary in interpreting the terms of the Constitution set limits to the Legislature.

Importance of U. S. A. Judiciary The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time establish. The Supreme Court consists now of a Chief Justice and eight associate judges. It must hold annual sessions in Washington, any six judges forming the quorum.

Organisation Next below the Supreme Court, there are nine Circuit Courts of Appeal, each of which is composed of three to four judges. The Chief Justice and the other judges of the Supreme Court are allotted among the

Circuits and are competent to sit as judges of the Circuit Court within their jurisdiction and preside over it. These Circuit Courts hear appeals from the District Courts and for the most part their decisions are final.

Congress may fix the qualifications of judges and determine what courts shall be created inferior to the Supreme Court. It may also determine the number of judges of the Supreme Court, their composition and procedure. It is not open to Congress to delegate to the Courts of the States the functions of a Federal Court.

All judges of the United States are appointed by the President with and by the consent and advice of the Senate and hold office during good behaviour. Their salary shall not be diminished during their continuance in office. They can be removed only by impeachment. The judges of the Supreme Court have a great reputation for learning and independence.

Parties

The new constitution (1787) gave rise to two parties, the Federalists who were for increasing the power of the National Government, and the Republicans who championed the rights of the individual States. In course of time the former lost ground and gradually disappeared. The Republicans however increased their hold on the people's support by calling themselves 'Democratic Republicans' and later on organised themselves into the great Democratic Party of the United States.

During the Presidency of Andrew Jackson (1829-1836) the Democratic Party became very active and advocated extreme individualism, the extension of the suffrage and of popular rights. Naturally this aroused bitter opposition. The question of slavery brought into prominence the Republican party. Even though the issue was settled by the Civil War, the two parties, Democrats and Republicans have retained their names with no settled principles or coherent policy. As a writer has put it, they are merely bottles with certain labels into which any liquid may be poured. With no distinctive programme to place before the country each party strives to catch the political breeze and gain the elections. The 'party caucus' has consequently become the most potent factor in American politics.

The separation between the Executive and the Legislature ordained in the Constitution could not be maintained in actual administration and some extra-constitutional machinery was needed to bring about a conjunction between the two. With the adherence of more states and territories to the Union, the difficulty of selecting candidates for the presidency, the governorships and other great offices considerably increased. Further, administration was almost elective in all States. All the office-holders had to be elected and their term was short. The cry of 'the spoils to the victors' by which it was deemed legitimate for the party which gained the elections to occupy all the public

Party
Organisation

offices and the frequency of elections necessitated the perfecting of the 'party caucus', as otherwise the people left to themselves would be helpless in grappling with this difficult task of filling the large number of offices. The whole country therefore came to be organised into a network of party organisations, ranging from the Primary (a meeting of all the qualified party voters resident in the smallest electoral district) to the Nominating National Convention which stands at the apex of the system and selects the party candidates for the office of the President and that of the Vice-President.

Lord Bryce has remarked that the organisation of political parties is one of the three chief contributions which the United States has made to Applied Politics, the other two being a Written Constitution and the use of Courts of Law to interpret it. Undoubtedly, party organisations rendered great service in the beginning to the people of the United States. It prepared the election business beforehand and enabled the citizens to do their duty as electors. It made the rule of the majority effective. It did much to unify the people of the United States, by bringing together rich and poor, natives and aliens. The party organisation was "the first to assimilate the immigrants from the four quarters of the globe with the American population; by sweeping them, almost on their arrival, into its net, it forthwith made these aliens sharers in the struggles and the passions which were agitating the country in which they had just landed. It brought together and sorted all the elements of the political

Its services

community, well or ill, but in the end everything found its place and settled down.”¹

But the American party organisation does not take any interest in the conduct of its representatives in the House. It cannot do otherwise as it has no standard, principles or creed by which to judge their political action. It cannot even enforce their loyalty to the party leaders, because the parties have no recognised leaders in Congress, like the head of the majority or of the opposition in England. Party discipline being weak in the Legislature, bargaining and log-rolling are common.

The American system of party caucuses gave rise to most serious abuses, and the parties came to be controlled by a handful of wire-pullers and professional politicians, the party ‘rings’ and the party ‘bosses’. There has been a great outcry against it, and from the beginning of this century efforts have been made to purge the system of some of its evils by legislation. The ‘Primary’ has now become a legally organised body, and cannot be manipulated by a self-chosen clique. Direct nominations by the citizens are also provided for in these Primaries. This innovation has been acclaimed as a great step in freeing the citizen from the clutches of the ‘caucus.’ But such reforms may not solve the problem altogether, as it is largely a question of a more active political conscience and greater civic courage and readiness to share the burden of administration on the part of the American citizens.

¹ Ostrogorski *op.-cit.* vol. II., p. 540.

CHAPTER XVII

THE DOMINION OF CANADA

THE British North America Act passed by the British Parliament in 1867 is the Constitution of Canada. It united the four Provinces of Ontario, Quebec, Nova Scotia and New Brunswick into a federation, called the Dominion of Canada. With the spread of population westward, other provinces came into the federation, and the Dominion has since 1905 consisted of nine Provinces.

The United States served as a model and the two constitutions bear a similarity in certain essential features. Both are written instruments, set in authority over the governments and the legislatures. Power is divided between the federal authority and the component units. The courts are assigned the function of defining the limit of authority to be exercised by the central government and the local governments.

But in very important matters the Constitution of the Dominion of Canada differs from that of the United States. It goes into greater details. But it contains no provision for the rights of the subjects. It presupposes responsible government, as ministers have to be members of the Legislature. The head of the Govern-

ment is not elected by the people nor has he a veto on legislation. Canada allows appeals from the courts of the Provinces to the Supreme Court of the Dominion and permits the courts of the Provinces to exercise jurisdiction in federal matters, though all control over the Judiciary rests with the Dominion Government.

Unlike the constitution of the United States the British North America Act defines the
Division of Powers o f powers of the Provinces and assigns all other powers to the Dominion.
The principle of division is therefore different in these two federations. The reason for this departure was that the great conflict between North and South in America over the question of slavery revealed the danger to a federation in which the powers of the States were undefined. So the process was reversed and the Central Government was made the depository of all powers not specifically granted to the Provinces.

But another feature of the British North America Act that marks it off from other federal constitutions is that it contains a double recital of powers. Section 92 enumerates the powers of the Provinces and section 91 deals with the classes of subjects on which the Parliament of Canada may legislate. But section 91 expressly states that "for greater certainty, but not so as to restrict" the general authority given to the Dominion Government to legislate on all matters not exclusively assigned to the Provinces, the legislative authority of the Canadian Parliament shall extend to the classes of subjects enumerated thereunder. The double

recital however led to conflicting interpretation about the grant of particular powers. ,

To the Provinces are assigned: (1) amendment of their constitution except as regards the office of Lieutenant Governor, (2) direct taxation for provincial purposes, borrowing, management of lands, (3) control of provincial officers, (4) municipal institutions, prisons, hospitals and similar institutions, (5) licenses to shops, saloons, etc., with a view to raise revenue, (6) local works and undertakings except those given specially to the Dominion, (7) administration of justice including the constitution of courts, (8) property and civil rights, (9) incorporation of companies, (10) solemnisation of marriage and (11) generally all matters of a merely local or private nature in the Province.

All questions regarding the competency of Dominion legislation and disputes between the Provinces and the Dominion Government regarding interpretation of the British North America Act are decided by the Privy Council on appeal. Canadian legal opinion is in favour of such appeal, in spite of the fact that the Statute of Westminster has given the Dominions the legal right to choose their own final court of appeal. The Privy Council has been a most impartial appellate court in all the disputes that have arisen from the interpretation of the Dominion Constitution in questions relating to religion, language and race. On account of acute differences between political parties over such

Interpretation of
Constitution

important problems the Canadian Judges should find it difficult to decide one way or the other without running the risk of being charged with partisanship. Another reason for the continuance of the system is that the Council has provided a common basis for the interpretation of the Royal prerogative. But as Keith observes, the decisions of the Privy Council have greatly increased the powers of the Provinces and tended to weaken the cohesion of the state.¹

The Provinces of Canada are free to alter their constitutions, except as regards the office of Lieutenant Governor. But neither they nor the Dominion can change the distribution of powers or the federal scheme as outlined in the British North America Acts. (1867-1930). The Imperial Parliament alone can effect any amendment.

Till now this has been done by an address to the sovereign passed in both Houses of the Dominion Parliament specifying the amendment proposed. According to convention the vote on this address should be unanimous. The Secretary of State, on receiving it, gets it passed by the Imperial Parliament, thus giving legal validity to the amendment. Indeed it would be a very delicate matter for the Imperial Parliament if any proposal of amendment was opposed by one or more of the Provincial Legislatures and by any considerable

¹ *The Constitutional Law of the British Dominions*, p. 325 *et seq.*

body of Dominion opinion¹. Repeated efforts have been made in Canada to enable the Dominion to amend her Constitution without reference to the Imperial Parliament, but divergent views have prevented any common agreement being arrived at.

It must be noted that the legal status of Canada as defined by the British North America Act has been considerably altered by the Statute of Westminster. The exercise of the veto by the crown on the advice of the British Executive has disappeared. Legal right and constitutional right are different and the British North America Act is no correct guide to the constitutional practice of the present day.

The Provincial Governments

Each of the nine Provinces that constitute the Dominion of Canada has a titular executive head called the Lieutenant Governor. He is appointed by the Governor-General in Council of the Dominion. Real executive power is vested in the cabinet or the executive council which is responsible to the legislature.

Except Quebec, all other Provinces have a single-chamber legislature, called the Legislative Assembly. Franchise is universal save in Quebec. In the Province of Prince Edward Island, the Legislative Assembly consists of 30 members, 15 of whom are elected by the owners of real property, and the remainder by universal franchise. The period is five years in all the Provinces, except Prince Edward Island where it is only four. In

¹ Cf. Keith, *op. cit.*, pp. 108—109.

four of these nine Provinces, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan, women may be elected to the legislature.

The legislature of Quebec alone is bicameral. The Upper House is called the Legislative Council and consists of 30 members appointed for life by the Lieutenant Governor. The Legislative Assembly consists of 90 members elected for five years. Women have no vote nor are they eligible to sit in the legislature.

Bills passed by the Provincial legislatures may be declared void by the Dominion Government if they were against imperial interests or Dominion obligations or outside the sphere assigned to them. Disallowance of Provincial Acts may not however be used to decide constitutional issues between the Provinces and the Dominion. It has now been normally left to the Courts to pronounce on the validity of Provincial legislation. The Provinces have absolutely no influence over the foreign policy of the Dominion.

The Provinces have control over civil and criminal courts as well as civil procedure. The judges of the Superior, District and County Courts in each Province are appointed by the Governor-General, generally from among the respective Bars of those Provinces. The judges of the Superior Courts hold office during good behaviour, but are removable by the Governor-General on an address of the Dominion Parliament. Police magistrates and justices of the Peace are appointed by the Provincial Governments.

The Dominion Government

The titular Executive Head of the Dominion is the Governor-General appointed by the King as his representative in Canada for a period of five years. He may summon, prorogue and dissolve Parliament and assent to bills, but in the discharge of these functions he is always guided by his ministers who are responsible to Parliament.

The Governor-General is assisted by the Privy Council of Canada composed of cabinet ministers and others. Ministers must be members of the Legislature and possess the confidence of its majority. The Canadian ministry functions exactly like the British Cabinet. In Canada, the Opposition Leader is officially recognised and gets a salary.

The Legislative Power is vested in a Parliament of two Houses, called the Senate and the House of Commons. The members of the Senate are nominated for life by the Governor-General on the advice of the Prime Minister. The number must not exceed 104. At present it consists of 96 Senators, distributed among the Provinces according to a certain ratio. It is not based on true federal principles, there being no equality of representation for each Province. Each Senator must be 30 years of age and a born or naturalised British subject. He must reside in the Province for which he

is nominated and possess property to the value of 4000 dollars.

The Senate has concurrent powers with the Lower House except in regard to money bills. If it rejects a bill sent up by the House of Commons, no constitutional provision exists to settle the dispute. But in practice the Canadian Senate has accepted its position of inferiority and plays only a subordinate part in legislation. It has no control over the cabinet.

The House of Commons is the popular chamber of the Dominion Parliament. Its members are elected from single member constituencies, distributed in each Province according to population at each decennial census. At present it is composed of 245 members. The term is five years, unless sooner dissolved by the Governor-General on the advice of the Prime Minister. Franchise is universal, but a voter must have resided in the constituency for two months. Any one qualified to vote may stand as a candidate for election. Thus women have not only franchise, but are eligible for election to the Dominion Parliament.

The House of Commons is the real centre of power. Money Bills may originate only in it. As in Great Britain, all proposals of public expenditure must be introduced by the cabinet alone. Bills, after introduction, are referred to committees, debated and voted upon and then sent up to the Senate for approval.

Each Parliament elects its own Speaker, from the ranks of the party that has gained the majority in the elections.

Judiciary

In pursuance of section 101 of the British North America Act, empowering it to establish a general court of appeal for Canada, the Dominion Parliament has established the Supreme Court and an Exchequer Court. The jurisdiction of the Supreme Court is subject to appeal to the Privy Council both in civil and criminal cases. Cases may be taken direct from the Provincial Courts to the Privy Council, either by its special leave or as of right. But the Council does not generally grant leave to appeal, so that in practice the Supreme Court has final jurisdiction.

Judges are appointed by the Governor-General on the advice of the cabinet. They hold office during good behaviour and are removable only on an address from both Houses of Parliament. The age limit for service has been fixed at seventyfive.

Parties

One should think that the vast distances between province and province, the diversity of economic interests and the difficulties of race and language should have given rise to a number of political groups in the Dominion Parliament, each vying with the rest to promote its particular interests. There are however only two political parties in Canada, the Conservatives and

the Liberals, working exactly on the English model, so far as organisation in Parliament and in the country is concerned.

But no vital issues seem to divide them. The Roman Church was for a long time the supporter of the Conservatives, especially in Quebec, because of the fear that the French Liberals would be innovators in religion also. But after 1896 it transferred its allegiance to the Liberals and again from 1930, there has been a veering round to the Conservative cause. Autonomy was considered to be the policy of the great Conservative Leader Sir J. Macdonald. But it was during the premiership of the Liberal Sir R. Borden that Canadian autonomy obtained recognition by the separate signature of the peace treaties and the membership of the League. The Liberals were once for free trade, but to secure the support of the manufacturing east they had to favour protection.

CHAPTER XVIII

THE CONFEDERATION OF SWITZERLAND

Switzerland is a remarkable instance of a country whose people divided in race, language and religion, had yet united in self-defence and evolved a polity which has not only stood the test of time, but serves as a shining example of a modern Direct Democracy in action. What Freeman claimed for the Constitution of England in respect of unbroken continuity of development is no less true of the Constitution of the Helvetic Republic. Democracy was rooted in her soil and the Constitution of the Confederation is but the reflection of the institutions of her Cantons and Communes. "We wear no other chains than the easy fetters of religion and morality, no other yoke than that of the laws we have made for ourselves. . . . We are ourselves the sovereigns of our little states. We appoint and dismiss our magistrates at will. The several districts of our cantons elect the councils which are our representatives, the representatives of the people. These are, in short, the very foundations of our constitution."¹ These eloquent words in which the Swiss appealed to the French Directorate in 1798 not to force on them a

¹ Deploige, *The Referendum in Switzerland*, pp. 19-20.

constitution, were no vain boast. Even today in certain Cantons the people meet in the open air in their *Lands-gemeinde* to pass laws and to elect their officials for the year. In the Confederation the people retain their right of law-making through the Referendum and the Initiative. Switzerland is not merely the playground of Europe, but the great political laboratory of the world. To the student of comparative politics no country offers such a rich and interesting field for research and study as the tiny Alpine Republic.

The historical circumstances which gave rise to this unique federation may be briefly referred to. Towards the close of the thirteenth century, the three Forest Cantons of Uri, Schwytz and Lower Unterwalden formed themselves into a perpetual league for mutual protection against their enemies. Their great success over the Hapsburg Count of Austria in 1315 brought in more adherents to the league. It expanded during the first half of the fourteenth century into the "Confederation of Eight Cantons"; and the political allegiance to the Hapsburgs was renounced in 1394. By the beginning of the sixteenth century the members of the Confederation had increased to thirteen. Several acquisitions of territory were subsequently made by them, and in 1648 the Confederation became independent of the Holy Roman Empire by the Treaty of Westphalia. The Cantons had their own governments for internal purposes. Some had democratic constitutions, while others were oligarchical. The Diet of the Confederation was

composed of delegates from the several Cantons and controlled its external policy. But it met at irregular intervals and had no Central Executive to enforce its decisions.

The period of the French Revolution was one of confusion and strife in Switzerland. In 1798 the French armies invaded the country ostensibly to give help to the democrats of the Vaudois against the oligarchs of Berne, but really to hold Switzerland as a dependency of France, more for strategic reasons, than for mere lust of conquest. The Confederacy was abolished and a unified Helvetic Republic was proclaimed.

The Constitution of the Republic gave little satisfaction to the Swiss, especially to the three Forest Cantons. Meantime their land became the cockpit of Europe. The French and their enemies freely fought on their soil, contributions were levied on the richer Cantons, the country was in the throes of anarchy, and Napoleon at last decided to intervene. In 1803 a new constitution known as the "Act of Mediation" was drawn up which was certainly a great improvement on that of the Helvetic Republic, but was however short-lived.

In 1815 after the fall of Napoleon, a new and larger Confederation was created with the approval of the Allies and their guarantee of its perpetual neutrality. It continued till 1848 when the civil war between the armed league of the catholic Cantons (the Sonderbund) and the majority of the Protestant Cantons convinced the Swiss of the weakness of their

confederacy. They replaced the make shift constitution of 1815 by a new constitution which was ratified by the Cantons in 1848. This was however merely a compromise. Under it the powers of the Federal Government were greatly limited. In course of time the tendency towards centralisation grew strong. The abolition of the separate judicial systems of the Cantons, the creation of a permanent Federal Tribunal to administer a uniform code of law, the ultimate reference to the whole people of all proposed laws,—these were some of the demands made by a large number of Radicals. In 1874 the two Chambers of the Legislature agreed to the revision of the constitution to give effect to the popular demands. A new draft Constitution was passed by them and submitted to the referendum of the people and was approved by the latter. It is this Constitution which is in force today in the Swiss Confederation with certain additions and amendments.

The Confederation of Switzerland consists of twenty-two Cantons of which three have been divided into half Cantons, so that there are twenty-five political units, each having its own government and its own laws. The object of the Confederation is to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberties and the rights of its members and to promote their common welfare. The Confederation has guaranteed to each of the Cantons its territory, its

Objects and
nature of the Con-
federation

sovereignty, its Constitution and the rights and freedom of its people. The constitution of each Canton must have received the assent of the Federal Assembly, and even a minor amendment shall not be valid if not sanctioned by it. This is in entire contrast with the constitution of the great Federal Republic across the Atlantic, where a State may alter its constitution without consulting either Congress or any other Federal authority and where only the Courts can decide if by any State legislation the Federal Constitution has been infringed or not. The Cantons enjoy complete equality of status and rights, no matter what their area or population may be. They cannot enter into alliances or treaties of a political character among themselves, though intercantonal conventions upon certain subjects are permitted. Disputes between Cantons should be referred to the Federal Government for decision. No Canton may resort to violence or even make military preparations.

The Swiss Constitution is unique in that it has given full institutional expression to the ideas of popular sovereignty. The Constitution itself was enacted by the people and can be changed only with their consent. The defects of representative democracy are sought to be remedied by the Referendum and the Initiative. The former transfers the final process of legislation from the council to the forum, and the latter enables the people to place on the statute book laws desired by

Unique features
of the Constitution

them. The chief executive officials of Switzerland are not the members of an all-powerful cabinet dominating the legislature, and through it the country, but merely high-placed public servants holding their office for a definite period and discharging the duties assigned to them under the direct eye of the elected representatives of the people.

The Constitution is not so compact as that of the United States. It contains a great many details of organisation which had better been left alone in a constitutional document. There is no separate and formal Bill of Rights, but Chapter I of the Constitution which deals with general provisions contains more than twenty articles relating to the rights of individual citizens. For example, Art. 4 says, 'All Swiss people are equal before the law. In Switzerland there are no subjects nor any privileges of rank, birth, person or family.' Art. 55 guarantees liberty of the Press. Arts. 56 and 57 grant the right of the citizens to form associations and to petition. Trial by jury is not mentioned, but no extraordinary tribunals may be established and no person may be withdrawn from his proper judge. As regards religion, freedom of belief and worship is guaranteed throughout every Canton. But religious views should not override civil obligations and no taxes may be demanded from any one to support a religious body to which he does not belong. (Arts. 49 and 50.)

No Bill of Rights,
but ample provi-
sion for indivi-
dual rights

The principle followed with regard to the division of powers is the same as in the United States of America.¹ The Cantons are sovereign so far as their sovereignty is not limited by the Federal Constitution and as such they exercise all rights which are not specially delegated to the Federal Government. Hence in case of dispute as to which may exercise a certain power, the presumption is in favour of the Cantons.

The Federal Government has exclusive powers in certain fields and concurrent powers in others. The former may be summarised under four heads, foreign affairs, military affairs, finance and public utility and other services.

(i) The National Government has control of foreign relations, appoints and receives diplomatic agents, declares war and makes peace, concludes treaties relating to tariff and commerce, though under Art. 9 the Cantons can make treaties with foreign States in respect of matters of public economy and police and border relations, provided such treaties contain nothing contrary to the Confederation or the rights of the other Cantons.

(ii) Neither the Confederation nor the Cantons may maintain a standing army. In case of sudden danger the Cantons threatened should notify the Federal Government whose summons must be obeyed by all the Cantons. However, military instruction is given in the schools to boys of ten years and upwards, and every

Swiss male citizen is liable for military service. The Confederation exercises control over the organisation, training and management of the army and over war materials. But the composition of the several bodies of troops, the maintenance of their effective strength and the appointment and promotion of the officers of these bodies of troops belong to the Cantons, subject to general regulations made by the Confederation.

(iii) In the realm of finance, the Federal Government has control over Federal property, post and telegraph, currency and banking, customs and excise and the manufacture of gunpowder and liquor. If however the revenue from these sources proves inadequate to the needs of the Confederation, additional contributions may be levied from the Cantons according to their wealth and taxable resources. It cannot levy any direct taxes, except the tax on those who want exemption from military duties.

(iv) The National Government is in charge of copy-rights and patents, owns and manages the railways and controls higher and university education.

Among the powers which the Federal Government may exercise concurrently with the Cantons are those relating to industry and insurance, control of the Press and construction and supervision of highways. Naturally any statute passed by the Federal Government takes precedence of Cantonal legislation in respect of these subjects.

Concurrent
Powers

Though the Federal Government possesses its own machinery for such branches of administration as customs, posts and telegraphs, it has to depend very largely upon the co-operation of the Cantonal authorities for the efficient administration of several departments like railways, education, weights and measures, subject to federal inspection and supervision. The object of this peculiar arrangement which is in contrast with that of the United States is two-fold. It avoids the unnecessary expenditure of a dual mechanism of administration, not a small consideration for a tiny country like Switzerland. Secondly, it bespeaks the goodwill of the Cantons towards federal legislation and renders federal centralisation less unpalatable to the people.

In another respect also the Swiss Constitution differs from that of the United States. In the latter, the constitutionality of laws passed by Congress or any State legislature is decided by the Federal Judiciary. In Switzerland, on the other hand, the Federal Assembly is declared to be the sole judge of the constitutionality of its own acts. One would naturally question the wisdom of lodging this important power of constitutional interpretation in the legislature itself, in preference to an independent judicial body free from the influence of politics. But legal tradition of continental Europe has always been the subordination of the judiciary to the executive and

legislative powers. In this matter, Lord Bryce refers to the views of two "very high Swiss authorities", who, while admitting the American system to be more logical, observed that no great harm had resulted from the Swiss practice, as any law of the Federal Assembly could be arraigned as a breach of the Constitution and a demand for referendum made, to ascertain the opinion of the people as the final authority. But this remedy is not available for laws which the Assembly has declared as urgent or not of general application.¹

The Constitution (Chapter III) has provided both for total and partial revision. The distinction between the two does not
Amendment of
the Constitution
however seem to be precise and scientific. Three methods of total revision are specified; but as they are cumbrous and none of them have been resorted to since 1874, it is needless to describe them here.

For partial revision, two methods are provided one of which is simple and frequently employed. It consists of the two houses of the Federal Assembly passing an amendment sitting separately. It is then submitted to the people. It takes effect if approved by a majority of Swiss citizens voting and also by a majority of Cantons. The vote of each Canton is decided by the vote of the majority of its people. The vote of a half Canton is counted as half a vote.

The other method of partial revision is the Initiative. 50,000 voters may petition for a change in

¹ Bryce, *Modern Democracies*, Vol. I, p. 402.

the Constitution either in general terms or in a definite draft. In the former case, if the proposal meets with the approval of the Federal Assembly, it formulates an amendment and submits it to the vote of the people and the Cantons. If it does not agree, it shall submit the question to the people; and if the majority of the voters vote in the affirmative, the Assembly must proceed with the revision in conformity with the popular decision.

In the case of a formal draft, if the Assembly approves, the amendment is submitted to the vote of the people and the Cantons. If however the draft is not approved by the legislature it may recommend its rejection or submit a Bill of its own at the same time as the one presented by popular initiative. No amendment may take effect unless ratified by a majority both of the voters and of the Cantons.

Cantonal Governments

Each Canton has a constitution of its own which it is free to amend subject to the approval of the Federal Assembly. It must not however contain anything contrary to the Federal Constitution; should establish a republican form of government, and should have been ratified by the people and should provide for amendments, if a majority of citizens demand any. The Swiss Cantons are never tired of making experiments to perfect their political organisation. They are "the democratic workshops of Europe."

Variety of Cantonal Constitutions

On their twenty-five anvils are hammered out almost every conceivable experiment in political mechanics; and if a particular experiment proves successful, it is adopted by one Canton after another, until it ultimately receives a definite consecration by becoming part of the Federal Constitution, which is indeed largely moulded on Cantonal experience. The Cantons are, so to say, the "seed-trial" grounds of the various forms of popular government. . . ."¹

As regards actual legislative machinery, the governments of the Cantons differ most widely. In one class of Cantons, the ultimate public powers are vested in a primary assembly of citizens called the *Lands-gemeinde*; in the other class, a representative assembly exercises all powers. But the latter class may be divided further into two groups, namely, those in which the referendum is obligatory and those in which it is optional.

(i) The *Lands-gemeinde* is an assembly of all adult male citizens of the Canton, meeting once a year in the open air 'with the turf for a carpet', under the presidency of the chief executive officer, the *Landamann* who, after giving a resume of the events of the past year, offers a prayer, after which the day's business begins. It considers all the proposals placed before it by the *Landrath* or the Great Council. Voting is generally by show of hands. It authorises all

The *Lands-gemeinde*: organisation and powers

¹ Deploige, *op. cit.*, Introduction, p. xiv.

revisions of the Constitution, enacts laws, votes the taxes and elects all executive and judicial officials of the Canton. Bryce calls this the 'oldest, simplest and purest form of democracy.'¹

(ii) The Great Council is also called the Cantonal Council. It is a popularly elected representative body. In Cantons where the primary assembly (the *Lands-gemeinde*) exists, its functions are subsidiary such as choosing officials, auditing accounts, passing ordinances and placing proposals before the assembly. But in other Cantons the Great Council is a very important institution, for in them it is the only law-making body. It should, however, be noted that the decisions of this Council are only provisional in those Cantons where the referendum is obligatory and that it is the final authority in many matters in those Cantons in which the referendum is optional.

It is elected by direct popular vote. Electors should be adult males, twenty years old and in possession of full civic rights. The term of office varies from one to six years, but in most Cantons it is three or four years. Members are frequently re-elected. Their salary is too small to encourage ambition. The Council meets twice a year generally. It exercises a general supervision and

¹ For an interesting account of the *Lands-gemeinde*, See Lowell *Government and Parties in Continental Europe*, Vol. II. pp. 221-224. Freeman's *The Growth of the English Constitution*, Chapter I, contains a classical description.

votes the budget. It cannot be dissolved by any department of government and adjourns from time to time upon its own motion.

The most interesting feature of Swiss Cantonal political institutions is direct legislation by the people by means of the referendum and the initiative. The referendum¹ is the process by which a measure passed by the legislature is submitted to a popular vote for acceptance or rejection, in order that the people may prevent a law from taking effect if they object to it. It may be adopted for two distinct purposes, for Constitutional revision and amendments and for ordinary laws. Though the former exists in every Swiss Canton, it is not peculiar to Switzerland as it is in operation in several other countries. But the referendum as applied to ordinary laws is purely Swiss.

There are two kinds of referendum, the obligatory, by which every legislative measure must be referred to the people, and the facultative or optional, by which the measure is referred only on the demand of a specified number or proportion of voters.

A petition calling for the referendum should be presented to the Executive Council of the Cantons within a month after the enactment of the law. The required number of signatories to the petition varies, as also the proportion of voters which is competent to

¹ See Lowell, *op. cit.*, pp. 238-253 for a brief account of the referendum, ancient and modern.

reject a measure (in some Cantons an absolute majority of all citizens, and in others a simple majority of voters). In case of rejection of a measure by the people the Executive Council gives proper notice to the legislature which is bound to declare the particular law void.

The initiative is the complement of the referendum. The latter is the veto of the people on the acts of the legislature and therefore of a negative character, whereas the initiative is intended to correct the legislature's sins of omission. By it, the people may bring their own proposals of legislation to the attention of the legislature and secure their enactment as laws, notwithstanding its opposition. This right exists in almost all the Swiss Cantons. The minimum number of signatories required for the initiative petition is in most Cantons the same as for the referendum. Any measure proposed in the petition must be taken up for consideration by the legislature within a fixed time. If it disagrees, it may however place before the people an alternative bill. But the initiative proposal must be voted upon by the citizens and their verdict shall be final.

The executive body of each Canton is an administrative council, which goes by different names in different Cantons. It may be called the Council of State. It consists of five to thirteen members, the tenure of office varying from one to five years. In more than half the Cantons, the members are elected by the people; in the rest they are elected by the Great Council or the legislature. The

Council chooses a President or Chairman (Landammann) who is the chief spokesman of the Canton.

Its functions are execution of laws, preservation of order, drawing up of fiscal statements and drafting of bills if required to do so. The Council has several departments of administration, over each of which a Councillor presides. But all acts are performed in the name of the Council as a whole. The Councillors may speak in the legislature, but not vote. They are usually re-elected for several terms, and permanence in office of such experienced men gives strength to the Council.

The Cantonal judiciary has been organised on the well-known principles that there must be separate courts for civil and criminal cases and that small matters must not be carried to the higher tribunals. At the bottom of the ladder, is the Justice of the Peace. This official is a mediator first, and a judge afterwards, because his duty is to arbitrate before proceeding to trial. This is why in several Cantons the rule is that every case must be heard by the Justice. Then comes the District Court comprising a bench of five to seven judges, elected by popular vote for a term of four years. At the top is the Cantonal Court which, besides hearing appeals, makes an annual report to the legislature about the administration of justice in the Canton as a whole. Juries are not employed in civil cases, though in some Cantons the lower criminal courts do employ one; but this is no handicap as the judges are all elected by popular vote. The judges do not possess a life tenure; but in practice

the same men are re-elected and Swiss judges do not change as frequently as one would suppose. Only in a few cases are appeals allowed to the Federal Tribunal.

Federal Government

The organs of the Federal Government are four, *vis.* i. the Federal Council, an executive body of seven members, ii. the Federal Assembly composed of two chambers, the Council of States and the National Council to which are entrusted the law-making powers, iii. the Federal Tribunal which is the Swiss Judiciary, iv. the people of the Confederation directly voting in matters of legislation and government.

<p>The supreme directing and executive power of the</p> <p>Federal Executive: The Federal Council</p>	<p>Confederation is vested in a Federal Council composed of seven members. They are elected by the two chambers of the Federal Assembly in joint session, from among all citizens eligible to sit in the National Council. But not more than one member may be chosen from one Canton; in actual practice certain Cantons are always represented in the Council.</p>
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The term of office is three years. But the Federal Council is completely renewed after every general election of the National Council. Its members may not accept any other office or engage in any other calling or profession during their tenure. From among the seven, two are elected annually by the Assembly as President and Vice-President. By convention, the latter succeeds to the Presidency. Re-election for a consecutive term is prohibited.

The President for the year is in no sense the chief executive officer, like the President of the United States. Nor is he like the English Prime Minister the leader of the majority party with power to dismiss his colleagues or dissolve the legislature. He is merely the chairman of the board and has few important powers that are not equally shared by his colleagues. Like them, he presides over one department. But as titular head of the State he performs all the ceremonial duties and represents the Federation at home and abroad and is called the President of the Confederation. One of his duties is to make a preliminary examination of the proposals of the various departments for the consideration of the Federal Council as a whole. He must also see that matters left to the charge of the several departments are duly attended to. In urgent cases he may be empowered by the Federal Council to take action in its name, but he must make a report subsequently for its approval. Thus it will be seen that he exercises no powers over the Federal Council and that all the functions conferred on him by the Constitution are those which he can most conveniently perform for the Executive Council.

There are seven executive departments with a Councillor in charge of each. He is primarily responsible for its administration. But all decisions shall emanate from the whole Council and be considered to be unanimous. The quorum for the Council meeting is four. When the business of any one department comes up for discussion in the Federal Assembly, the Coun-

cillor concerned attends, joins in the debate, answers questions and clears up difficulties.

The Federal Council is not however a cabinet. Though its members prepare bills and lay them before the Assembly and even defend them, they are not members of the legislature and do not represent any political party or stand for any particular policy or programme. Even if the Federal Assembly turns down their proposals or vetoes their actions, the Councillors do not resign, but continue to serve their full term of three years. The Council is not a homogeneous body, standing or falling together like the cabinet. But the experience of its members is too valuable to be made light of by the legislature. Hence in practice the Federal Council assumes the leadership and has considerable influence on the course of legislation and has been rightly called the executive committee of the Federal Assembly.

It executes the laws and resolutions of the Confederation and the decisions of the Federal Tribunal and gives effect to inter-Cantonal arbitrations and awards. It conducts the foreign affairs and examines the treaties made by the Cantons with each other or with foreign powers. It administers the military establishment and all other branches committed to the Confederation and has general supervision over all federal officials. It makes all appointments, not specially assigned to the Federal Assembly or any other authority. It submits to the Federal Assembly at each regular session an account

Functions: Executive

of its administration and of the general condition of affairs, foreign and domestic. It prepares the federal budget and lays it before the Assembly.

The legislative function of the Council lies in its preparing bills for consideration by the two Houses, giving its opinion on the private members' bills referred to it and drafting bills at the request of the Assembly. The Federal Council has now and then been given power to issue ordinances.

The Council has also some judicial functions. It decides all administrative cases which are by the Constitution excluded from the competence of the Federal Tribunal. In its capacity as the guardian of the constitutions of the sovereign Cantons it may act directly without consulting the Assembly.

Unlike other countries where executive power is entrusted to one man who appoints the ministers, Switzerland has instituted a plural executive. The Swiss Executive Council does not exercise its powers on behalf of a King or a President as in Great Britain or in France; its powers are directly conferred on it by the Constitution. It is not dependent on the legislature and dismissible by it as the British or French Cabinet. Nor does it resemble the United States executive, because the latter cannot join in the debates of the legislature. Switzerland has

Peculiarities and advantages of the Swiss Executive system

no Prime Minister, the Swiss Executive Council President being simply the first among equals. Undoubtedly it is one of the most interesting political institutions of the Swiss Republic.

The Swiss Executive Council represents the whole community and not any one political party. Men of real ability, experience and judgment are therefore appointed to serve together on the executive body of the nation without any regard to their political views. At the same time the intimate relationship between the executive and the legislature is maintained by the practice of the Federal Councillors appearing on the floor of either House to discuss and debate. The system therefore has all the advantages of the British Cabinet system and none of its disadvantages. Further though elected only for three years at a time, the Swiss Executive Councillors enjoy a great degree of independence because of the certainty of re-election. Constitutional practice has made their tenure virtually permanent; and continuity of policy and traditions has been secured.

Thus in Switzerland alone has the thorny problem of the relationship of the executive to the legislature been successfully solved. Its administrators have been kept out of party politics and are not changed with every tide of political success. The Federal Council is the 'mainspring and the balance-wheel' of the Swiss Federal system and has evoked genuine admiration

from the most competent judges like Lowell, Dicey, and Bryce.

The Federal Assembly

The Council of States is the Upper House or the Second Chamber of the Swiss Federal Assembly. It is composed on the true federal principle of state-rights, each of the twenty-two Cantons sending two representatives irrespective of area and population. The manner of election and the term of office are left to the Cantons themselves. This explains the great diversity in the conditions of election. Some Cantons choose their delegates for one year, others for three or four years, though a three-year term is gradually becoming the general rule. Some delegates are elected by direct popular vote, others by the Cantonal legislatures. They may be recalled at any time. Two Cantons have given this power expressly to their legislatures. Members are paid by the Cantons themselves.

The National Council is the Lower House and consists of 187 members chosen by direct election for four years according to a law of 1930. Each Canton shall have one member for every 22,000 inhabitants or major fraction thereof, apportioned according to a decennial census. Franchise is not universal, but is limited to adult male citizens. Any voter other than a clergyman may stand as a candidate.

The supreme authority of the Confederation is exercised by the Federal Assembly subject to the rights of the people and of the Cantons. It has legislative, executive and judicial functions. i. The Federal Assembly has power to enact all laws and pass constitutional amendments, subject to the vote of the people. ii. It elects the Federal Council, the Federal Tribunal, the Chancellor and the army officers. It declares war and makes peace, grants pardons, looks to the preservation of order and makes all alliances and treaties with foreign powers. It controls the Federal army and supervises the work of the Federal Council and the Federal Tribunal. It votes the budget and appropriations. iii. Its judicial function lies in deciding complaints against the Federal Executive and questions arising from differences between the several departments of government.

The two Houses are co-ordinate in authority. Any measure may originate in either House and may be introduced by any member. All federal laws, decrees and resolutions are passed only by agreement of the two Houses though they sit separately and vote.

But the two Chambers meet in joint session under the direction of the president of the Lower House for three purposes: (a) Joint sessions to decide conflicts of jurisdiction between the federal authorities, (b) to grant reprieve and pardon, (c) to elect the Federal Council, the Federal Tribunal, the Chancellor and the Commander-in-chief of the army.

With 187 Councillors, the National Council has in all joint sessions a marked preponderance of voting power.

Though the powers of the two Houses are equal, the Council of States enjoys less authority and influence than the National Council; because in actual practice the Federal Councillors are chosen from the Lower House and are guided generally in their policy and actions by it. The other reason is the undeserved reputation for idleness which the Upper House has acquired, as on account of its small number it gets through its work quickly and has not often much to do. Hence as in other countries with two chambers, the centre of gravity is to be found in the Lower House.¹ Proposals have been made now and then for its abolition on account of its comparative insignificance, but have not met with any great approval. It therefore appears to fulfil adequately its role in a bicameral federal legislature. But there is great force in the remark of Dicey that it is one of the parts of the Swiss Constitution which was suggested by the experience of a foreign country, and for this very reason has not fitted in with the native institutions of Switzerland.

The National Council has two ordinary sessions every year, the first beginning on the first Monday in November and the second session on the first Monday in

Organisation and procedure

¹ cf. Vincent, *Government in Switzerland*, chapter XIII; also Brooks, *Government and Politics of Switzerland* pp. 91-101 for details of procedure.

December. But the pressure of business has necessitated a brief session in March and short extra sessions in other months. The Federal Council issues the summons; failing it, one-fourth of the members or five Cantons may demand it. A president, vice-president and four tellers are chosen for every session. They together nominate the members of the several committees, take the divisions and decide on the questions arising from absence of members. The office of the president and vice-president may not be filled by the same person for two consecutive sessions, but by a legal fiction all sessions in a year are considered as one. An absolute majority of the total members is necessary to constitute a quorum and questions are decided by the majority of those voting. Every bill is said to be introduced into the Federal Assembly, not into the one or the other House separately. Before the beginning of the session the Federal Council presents to the presidents of the two Houses the bills and resolutions to be introduced. Thereupon the presidents divide the business between themselves and each presents to his House the portion assigned to it. This arrangement saves time. In case of a tie in voting, the president has a casting vote. Though not a powerful and influential office, the presidency of the National Council is coveted as a great prize. The organisation of the Council of States is similar to that of the other House.

The sessions seldom last for more than three weeks. The Council devotes itself entirely to dispatch of work.

There is no temptation to oratory, inasmuch as the debates are not officially reported and the newspapers

The National Council at Work do not publish the speeches in full. All the three official languages are used in debate, German, French and Italian, but are interpreted. The speeches are conversational in tone and businesslike, with no regard to form. They are not delivered from the tribune as in France, but by members standing in their places. Debate is singularly free from the heat and dust of parliamentary warfare. Flights of oratory and fervid appeals to passion, so characteristic of the French Chamber, are rare. In spite of the fact that members are allowed to speak thrice to every question they do not waste time. A wearisome speaker soon finds himself addressing a thin and indifferent House, most of the members engaging themselves in loud conversation or newspaper reading. The Federal Assembly has acquired the reputation of being the most businesslike body in the world, doing its work thoroughly and quietly.

The Federal Chancellor is elected by the Federal Assembly along with the Federal

The Chancellor

Council for a period of three years.

His duty is to keep a record of the proceedings of the Assembly. He is also entrusted with the work of supervising publication and distribution of laws. When the Assembly is not in session, it is his function to act as the secretary of the Federal Council, attend its meetings and prepare its communications and orders.

The Federal Tribunal

The supreme court of the Confederation is the Federal Tribunal. It consists of twenty-four judges and nine substitute judges elected by the Federal Assembly for terms of six years. Any Swiss citizen qualified to sit in the National Council may be elected. But in the composition of the court, the three national languages must be represented. The judges should not be related to one another and may not sit in the Federal Legislature or engage in any other business or occupation. A president and vice-president are chosen by the Federal Assembly from among the judges for terms of two years.

As a court of first instance in civil cases, it hears disputes between the Confederation and the Cantons, or between the Confederation on the one hand, and corporations or individuals on the other, disputes between different Cantons, or between Cantons and corporations or individuals, the sum involved being at least 3,000 francs. It decides all questions specially assigned to it under the federal law such as railways, liquidation of companies, bankruptcy. It acts as a court of appeal over Cantonal courts when parties agree. It has constitutional jurisdiction with regard to conflicts between Federal and Cantonal authorities, inter-Cantonal conflicts and boundary disputes, and complaints of individuals or corporations regarding infringement of their guaranteed rights. It claims criminal jurisdiction in respect of treason,

riot and violence against federal authorities, offences against international law, political crimes resulting in armed intervention and other criminal cases referred to it by the Cantonal courts with the consent of the Federal Legislature.

The court divides itself into chambers for civil and criminal work; the composition of each chamber varies from three to eleven. A full bench of eleven judges sits to try cases of extradition, appeals against the awards of the national expropriation commission, or forced liquidation of railways and banks of issue. Except in penal cases, there is no jury.

The Federal Court is one of the weakest features of the Swiss Constitution. In the first place, unlike the Supreme Court of the United States its powers are limited by the legislature. It must administer the laws passed by the Federal Assembly and cannot declare Federal legislation unconstitutional. It may however declare Cantonal laws void if they are inconsistent with Federal laws. Secondly, it has no separate machinery to enforce its decisions and has to depend on Cantonal authorities for that purpose. Thirdly, the Tribunal has no control over administrative acts and public officials, as all such cases are reserved by the Federal Council or the Federal Assembly. Lastly, the elective tenure of the judges cannot but detract from the independence of the judges. The great esteem in which the judges of the Supreme Court of the United States are held is

The Federal
Court not a great
success.

largely due to their independence which itself is the result of their security of tenure, as they cannot be removed except by a special and difficult procedure. The Federal Tribunal and the Council of States were modelled on the Supreme Court and the Senate of the United States, and because of this foreign origin, both of them have not been a great success.¹

Direct Legislation by the People

The direct participation of the Swiss people in Cantonal legislation, through the referendum and the initiative has been already dwelt upon at length. It needs only to refer here briefly to their share in the work of federal legislation and government as a whole.

In almost all countries of the world, bills passed by the legislature take effect generally from the date of their publication by the Executive. But in Switzerland such bills are on probation for three months, during which period a certain number of citizens may ask for a plebiscite to be taken on them, the result of the plebiscite deciding the fate of the measures. This Swiss procedure is called the Federal Referendum, and applies to all bills passed by the National Council and the Council of States and promulgated by the Federal Council, the only exceptions being bills declared by the Legislature to be of an "urgent nature", resolutions not of general application, federal budget and international treaties.

¹ Dicey has neatly summed up these differences. "American Federalism is strong where Swiss Federalism is weak; where American Federalism is weak, Swiss Federalism is strong." *op. cit.* p. 528.

Copies of the published bills and resolutions are sent to the Cantons, and for ninety days are open to inspection by the people. Within this probation period, either 30,000 citizens or eight Cantons may petition the Federal Council for a popular vote. The petitioners must sign with their own hand, and their signatures must be attested by the Chief Officer of the Commune. Thereupon the Federal Council fixes the date for general voting. But this cannot be within four weeks after the announcement and must be the same day for the whole Confederation. If a majority of the votes cast is in favour of a bill, it is accepted and placed on the statute book. If within ninety days no petition for a plebiscite is received the bill becomes law.

Direct legislation by the people through the referendum and the initiative has been viewed in opposite lights by writers on Politics.¹ It is by some deemed to be the cure for the ills of representative government. Modern democratic government is built on parties. Once the people have voted at a general election for one or the other of the parties on the strength of its general programme, their task seems to be over. The representatives are no longer answerable to them. They vote on party lines, and free discussion is virtually stifled by party domination. Speeches do

¹ See Bryce, *op. cit.*, Vol. I, pp. 440-448 for an excellent resume of the case for and against the referendum; also Bonjour, *Real Democracy in Operation*, Chapters iv-vii.

not turn votes and the minority have no chance of converting the majority to their views, especially if a caucus rule the legislature as in Australia. The party in majority may embark on a course of legislation opposed to the will of the electorate and the people therefore would be impotent to prevent it. The referendum ensures that no law shall be passed which is opposed to popular feeling. Popular sovereignty would thus be a reality. Secondly, the direct vote stamps every law with the approval of the nation and every citizen would feel it his duty to render willing obedience to it. Sectional opposition will be reduced to a minimum. Thirdly, the nation's verdict would put an end to all controversy and be a safeguard against revolution. Finally, it arouses public interest in legislation and is unrivalled as an instrument of practical instruction in politics. Switzerland is generally pointed out as the country which has most successfully worked the two instruments of direct democracy, the referendum and the initiative.

But the objections seem to be even stronger.

Objections to Direct Popular Legislation There is no doubt that direct popular legislation, if frequently used, may considerably reduce, if not, destroy altogether, the sense of responsibility of the legislature. Secondly, the representatives are generally persons of responsibility, experience and knowledge, while the masses must necessarily be ignorant of the subtler and remoter aspects of any piece of legislation. Any ultimate appeal to them would be an "appeal from responsibility,

to irresponsibility, from knowledge to ignorance". Thirdly, modern legislation is a complicated matter. It is very difficult to separate the issues involved and ask for a direct vote of the people. For instance, Indian voters may not find it difficult to vote "yes or no" on the general question of Protection for their country, but on the details of legislation with regard to a protective tariff, the large majority of them would be unfit to give a decision, even if it were possible to obtain their judgment on each of the tariff items. Fourthly, it cannot minimise the evils of party interference. Party agents and political agitators would still carry on their propaganda and organise the electorate in favour of or against the subject of the referendum or of the initiative. Lastly, the Swiss example is far from convincing. The Swiss referendum has been admittedly a conservative force and the number of people actually voting has not been quite satisfactory.

Even granting the success of direct popular legislation in Switzerland, one should be wary of considering its adoption in other countries. Political conditions are peculiar in Switzerland. It is a small country with the longest tradition of self-government. Its population is homogeneous and intelligent and contains few irreconcilable elements. The citizens are actuated by intense patriotic feeling and not dominated by party organisation. No great inequality of wealth gives rise to class warfare and the people are generally contented. The successful political institutions of such a unique

country cannot therefore serve as bases of comparison or prediction and Lowell puts it in a nut-shell when he remarks that the problem which the Swiss have had to solve is "that of self-government among a small, stable and frugal people and this is far simpler than self-government in a great, rich, ambitious nation."¹

Parties

The most important parties² in Switzerland are today the Catholic Conservatives, the Radicals, the Social Democrats and the Agrarians. The Liberals who a generation ago were a force in Swiss politics are now nearly wiped out. Communism is an insignificant factor.

The Catholic Conservatives are the party of the Right, the party of reaction. Their main object is the defence of the Church and the promotion of the welfare of their co-religionists. They have also been of late advocating the cause of labour. They are now pretty equally balanced in strength in the National Council with the other two large parties, the Centre and the Left.

The Radicals form the Centre party. Their main aims are increase of federal authority, anti-clericalism

¹ Lowell, *op. cit.*, Vol. II, pp. 335-336.

² The relative strength of the parties in the National Council in 1932 was: Radicals 52; Catholics 44; Social Democrats 49; Agrarians 30; Liberals 6; Communists 3; others 3. Cf. *Statesman's Year Book*, 1933.

and direct popular government. They are the strongest party in the National Council, though they have no independent majority. Their organisation is broad-based and closely knit. The party draws its strength from the leaders of industry and finance and to some extent from the Protestant peasantry.

The Social Democrats occupy the extreme wing. They are inspired by the same principles as the Socialist parties in other countries. They are naturally very strong in manufacturing and industrial centres. Though the Swiss cannot easily take to doctrinaire socialism it cannot be gainsaid that they have gradually been educated by Socialist propaganda. The party now occupies an important position in the National Council.

The fourth party consists of the Agrarians and has grown out of the League of Peasants, started in 1919 as a result of a secession from the Radical Party. Its interests are mainly agricultural. Having no strong political leanings, the members of the party are contented with playing a subordinate part in national politics.

Every important party is organised on a federal basis. In each Canton there are a number of self-governing groups which are affiliated to each of the great parties. They are guided in their action with regard to all national issues by the officials of the Central Organisation of the party. The Central Committee of each party consists usually of thirty to fifty members and is elected

every year either by the Cantonal organisation or by the Diet.

The Diet is held every year in one of the chief towns. Delegates from all parts of the country attend it. The annual report of the party and the accounts of its officials are presented at the session. The Diet then discusses all problems of public importance, reviews the work of the federal legislature and lays down the programme for the future. These annual sessions of the Diet are attended also by the representatives of the party in the National Council and the Council of States.

In spite of the existence of several parties and their organisation, political life is singularly free from strife and bitterness. This is all the more remarkable in a country which contains three different peoples, speaking three different languages and following three different religions. But the reasons are not far to seek. Switzerland has no problems of colonial or foreign policy to give rise to any serious division. Except with regard to the treatment of clerical orders, religious differences do not come into play in practical politics. Class warfare is at a minimum owing to less inequalities in the distribution of wealth than elsewhere. The Swiss are not blind worshippers of names and personalities and not therefore easily 'led'. Nor are politics a game of 'Ins' and 'Outs' with them, but a matter of business in which ability must be recognised and trusted no matter in which party ranks it

Absence of party
strife

may be found. Their peculiar geographical position compels them to sink personal differences in the cause of the country and makes the average Swiss citizen intensely patriotic. Professional politicians and demagogues cannot thrive under such conditions. In the legislature the seating arrangements (members sitting according to their locality, not according to their party allegiance) and the rules of procedure do not tend to develop heat and bitterness. The most important offices are elective and not at the disposal of the party in majority. Finally, the reserve power of the people to decide ultimately on the most important questions robs the parties in the legislature of the great satisfaction to be derived from a successful fight.

CHAPTER XIX

THE COMMONWEALTH OF AUSTRALIA

AUSTRALIA was colonised by a single race and held under a single flag. For a long time there was no external danger compelling the several autonomous British colonies to unite together for protection. On the other hand they had all prospered by division and acquired a distinctive character of their own which they were loath to give up. Naturally therefore federation came late in the history of the six Australian Colonies.

The intrusion of Germany into the Pacific, the rumoured ambition of France to lay hands on a part of the New Hebrides and the report of the German annexation of New Guinea aroused great excitement and led to the summoning of a conference in 1883, which however proved abortive. The defeat of China by Japan and the problem of immigration of Asiatic races like the Chinese, the Japanese and the British Indians, however emphasised the need for concerted action.

Economic issues played a more decisive part. It was held that union would put an end to the wasteful rate war among the State railways and to the inter-

state disputes over the use of the Murray for navigation and irrigation, that abolition of all customs barriers would promote trade, that money could be borrowed more cheaply on federal security and that business would prosper by uniformity of legislation on a large number of commercial and industrial subjects.

Meantime the sense of nationality had also been growing among the Australians and there was a real popular movement in favour of union. A great convention met at Adelaide in 1897. A constitution was drafted and submitted to the several colonial legislatures, which however proposed certain amendments. These were considered and the draft of the amended constitution was placed before the people in each colony. After being approved by them, the Constitution was sent to the Imperial Parliament which passed it on July 9, 1900. Under a Royal Proclamation the Constitution came into force on the 1st January 1901, creating a Federation under the name of "the Commonwealth of Australia", which included New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia.

Like the great federal Constitution of the United States of America, the Australian Constitution came direct from the hands of the people, and its important provisions may not be altered without a reference to them. It is therefore radically different in its genesis from that of the other Federal State under the British Crown *i.e.*, the Dominion of Canada

Constitution
derived from the
people: Contrast
with Canada

which as we have noted, was the work of statesmen and put into operation without the people's consent.

The Australian Constitution has adopted the true federal principle as regards the allocation of powers between the Commonwealth and the States following the example of the United States of America and of the Confederation of Switzerland. All powers not exclusively vested in the Commonwealth or withdrawn from the State belong to the States. The Constitution differs vitally in this respect from that of the Dominion of Canada, because in the latter the Provinces exercise only such powers as are definitely assigned to them in the Constitution.

The powers withdrawn from the States and vested in the Commonwealth are however very wide. They are enumerated in Section 51 under thirty-nine heads. Among the powers exclusively vested in the Commonwealth may be mentioned, jurisdiction over the seat of Government of the Commonwealth and places acquired by it for public purposes, customs and excise, bounties on exports, coinage, naval and military defence. There are certain concurrent powers which if exercised by the Commonwealth Government would prevail over those of the State Legislatures. These include banking, bankruptcy, census and statistics, copyrights, patents and trade marks, immigration, emigration and naturalisation, insurance (outside each State), foreign commerce, posts and telegraphs, weights and measures. According to

Section 109, when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall to the extent of the inconsistency be invalid.

The States, besides enjoying all residuary powers, may amend their own constitutions. Their Governors shall continue to be appointed by the Crown and to have direct access to the Colonial Office. Thus in the division of powers, it was the object of the Fathers of the Australian Constitution to guarantee in a reasonable measure the maintenance of State rights.

The High Court of Australia is the ultimate Court of Appeal in the Commonwealth upon questions of interpretation with regard to the terms of the Constitution. The validity of laws passed by the Commonwealth Parliament or by a State Legislature may therefore be tested in the Federal Court. Cases of constitutional conflicts between the States or between the State and the Federal Government also come before the Federal Judiciary. In this respect also the Australian Federation differs from that of the Dominion of Canada, for in the latter such questions are decided by the Privy Council on appeal.

The High Court of Australia, like the Supreme Court of the United States, has interpreted the Constitution so as to increase federal authority.

Section 128 which deals with the alteration of the Constitution, is long and cumbrous, though the process prescribed is not so

Interpretation of
the Constitution

Amendment of
constitution

complicated as that of the United States. There are two ways of effecting a constitutional change: (i) If both Houses of the Commonwealth Parliament pass an amendment by an absolute majority in each, it should be submitted to the vote of the electorate not earlier than two, or later than six, months after its passage. (ii) If one House alone passes an amendment and the other disagrees, and if the former passes it again, twice with an interval of three months, in the same session or a subsequent one, the Governor-General may submit the bill to the electors. But as the Governor-General can exercise this power only on the advice of his ministry and as the latter is responsible only to the House of Representatives, the Australian Senate cannot in effect appeal to the electorate when it wants a change in the Constitution not approved by the Lower House.

But any amendment to become law must be approved by a majority of electors voting in the whole Commonwealth and by a majority of the States, the vote of each State being decided by the majority of its electors voting. No State may be deprived of its proportionate representation in either House of Parliament or of its minimum number of members in the House of Representatives without the consent of the majority of its electors.

To sum up, no amendment of the Constitution may be made unless it be with the consent of the electorate and of the States. The people cannot however initiate constitutional changes of their own accord.

as in Switzerland. The difficulty of effecting a revision of the Constitution is proved by the fact that out of five proposals made in the first twenty years of the Constitution only one obtained the required majority.

It must be noted however that many of the provisions of the Constitution may be changed by an Act of the Commonwealth Parliament passed in the ordinary manner, because they remain in force only "until Parliament otherwise provides." It is a ticklish question whether the Commonwealth Parliament can abolish the States and annul the Constitution by repealing the Act of 1900. But as Keith truly remarks, "any attempt at unification would necessitate the concurrence of all the States in the referendum, since a single rejection would render the scheme impracticable of operation, so that if unification is ever to be accomplished it would seem that an Imperial Act would be necessary."¹

The State Governments

The Commonwealth Constitution has not only given ample recognition to the rights of the component States in the federation, but allowed them a certain degree of international status. Their Governors are appointed directly by the Crown, unlike the Lieutenant Governors of the

¹ *Op. cit.*, p. 102. On the other hand the attempt of W. Australia to secede from the Commonwealth through the intervention of the Imperial Parliament raises a grave constitutional issue.

Canadian Provinces. They can communicate direct with the British Government. The States alone can carry out all treaty obligations, arising from the acts of the Commonwealth Government and may have their own consulate. Though their claim to be invited to the Imperial Conference was negatived, they protested successfully against the passing of the Statute of Westminster without their consent, and the Commonwealth Government had to give an assurance that all legislation to implement the Statute would be passed only after a conference with the States. The States can alter their constitutions by the ordinary process of legislation.

The frame of government in each State is modelled on that of the United Kingdom. At the head of each State is a Governor appointed by the Crown, usually for five years. He is merely the nominal head of the executive. Real power is in the hands of a Cabinet chosen generally from the members of the popular branch of the Legislature by the person whom the Governor commissions to form a government. The cabinet must resign if it is not supported by the majority in the Legislature. It has however the right to demand a dissolution.

The Legislatures of all States, except Queensland, consist of two chambers. The Upper House is called the Legislative Council. Members of the New South Wales Legislative Council are nominated for life by the Governor on the advice of the Cabinet; those of the second chambers

of the other States are elected for six years, a certain proportion (generally half) retiring in rotation. The Legislative Councils of South Australia and Tasmania may not be dissolved by the Executive. Electors have to possess certain property qualifications, if they were not graduates, teachers, lawyers or church ministers.

The popular branch of the State Legislatures is called the Legislative Assembly or the House of Assembly. Franchise is universal. No property qualification has been prescribed for the voters. Election is on the basis of a single member constituency except in Tasmania where the system of Proportional Representation is in vogue. In some States postal voting is allowed. The tenure is three years unless the House is dissolved earlier. Members are paid.

In all States, the Lower House dominates the legislature on account of its control over finance and its power to make or unmake ministries. But in several, the Legislative Councils act as a check on the popular House and freely exercise their powers of revision and rejection. This has given rise to deadlocks, and proposals have been now and then made to abolish the Councils. Queensland for instance which had provided for a referendum to deal with deadlocks abolished her Second Chamber in 1922, as the reference to the people produced unsatisfactory results.

Every State has a supreme court which stands at the apex of its judicial system. The State Judiciary judges are appointed for life by the Governor on the recommendation of the Ministry. They

may be removed only upon an address from the Legislature. The State courts are also invested with federal jurisdiction and an appeal lies from them to the Federal Supreme Court.

The Commonwealth Government

The head of the Executive is the Governor-General appointed by the King, on the advice of the Prime Minister of the Commonwealth. Till recently he used to be chosen from the ranks of the British nobility. The term of office is five years. He is merely the constitutional head of the State acting in all matters strictly on the advice of the Executive Council of Ministers.

Real power is in the hands of the Federal Executive Council. It consists of thirteen Ministers of State appointed by the Governor-General. If they are not already members of the Legislature, they must become so within three months after appointment. As in England each Minister is in charge of a Department of Administration. There is no legal provision that the ministry must enjoy the confidence of the majority in Parliament. But convention has firmly established the rule as in Great Britain.

The legislative power of the Commonwealth is vested in a Federal Parliament. It consists of two chambers, the Senate and the House of Representatives.

The Senate is composed on a truly federal basis,
like the Senate of the United States.
The Senate: Each State, large or small, elects six
Composition members, the total strength thus being
thirty-six. The Constitution specially provides that in
the event of Parliament increasing or diminishing the
number of Senators for each State, equal representa-
tion of the original States shall be maintained and that
no original State shall have less than six Senators.
The tenure is six years, but one half retire every three
years. In case of persistent disagreement with the
House of Representatives, the Senate may be dissolved
and an entirely new Senate elected.

The Senators are directly chosen by the people in
each State voting as one electorate. A system of pre-
ferential voting has been adopted. Each elector is
compelled to vote for one more than twice the number
of seats to be filled, or for all the candidates, if fewer,
in order of preference. Franchise is universal and the
qualifications for a Senator are the same as those for a
member of the Lower House. He must be a natural
born subject of the King or have been for five years a
naturalised subject under the law of Great Britain
or of a State of the Commonwealth and that he
must be of full age and have resided for three years
within the Commonwealth.

Any casual vacancy is filled by the respective State
Legislature if in session; if it is not in session, by the
Governor of the State with the advice of his Executive

Council. But any such filling up is purely a temporary expedient, because at the next general election of members of the House of Representatives or at the next election of the Senators for that State, whichever first happens, a successor shall, if the term has not already expired, be chosen to hold the place until the expiration of the term.

The Senate is a co-ordinate branch of the Commonwealth Parliament. It has equal powers of the Senate powers with the House of Representatives except with regard to Money Bills which must originate in the latter only. The Senate may reject a Money Bill, but may not amend it. It may return it to the Lower House, requesting the omission or alteration of any items in it and the House of Representatives may, if it thinks fit, make any such omission or change. 'Tacking' has been prevented by the provision that bills for the ordinary annual appropriation should not deal with anything else. Laws proposing taxation must deal with only one subject, except those relating to customs or excise; and clauses of any taxation law dealing with any other matter shall be invalid. Thus the power of the Australian Senate over finance is far more than that of any other Second Chamber in the British Dominions and has been exercised by it especially in tariff matters so as to compel the Lower House to come to a compromise. It has no executive or judicial functions like those of the Senate of the United States.

Section 57 of the Constitution has provided an effective but elaborate machinery for the settlement of deadlocks. Briefly

Deadlocks

stated, if a bill is rejected twice, with an interval of three months, by the Senate, the Governor-General may dissolve the two Houses simultaneously and order new elections. If the Houses, newly elected, also disagree, the Governor-General may convene a joint sitting of the members of both Houses to deliberate and vote, and the bill shall be deemed to have been passed by both Houses of Parliament if agreed to by an absolute majority of the total number of the members of the two Houses.

The Senate may choose a President from among its members to preside over its sittings. Procedure in the Senate He may be removed by a vote of the Senate or he may resign his office by writing to the Governor-General. The quorum for a meeting of the Senate is one-third of its total strength. All questions shall be decided by a majority of votes. Voting is not by States, but personal. Each Senator shall have one vote. The President shall be entitled to vote, and in case of equality the question shall be decided in the negative.

Intended to be the champion of the rights of the States, the Australian Senate has not fulfilled its purpose.¹ Conclusion Elected directly from the people like the Lower House, it failed to be of any great stabilising influence and was sometimes less conservative than the other House, passing resolutions in favour of the nationalisation of all means of production and distribution of wealth. But since the accession of Labour to power in the House of

¹ Cf. Bryce, *Modern Democracies*, Vol. II, pp. 203-205; also Marriott, *The Mechanism of the Modern State*, Vol. I, pp. 250-252.

Representatives, the Senate has exercised a great check on the extreme policy of the Socialists and compelled all its important financial projects to be referred to a Public Works Committee.

As regard constitutional changes it may in theory appeal to the people, but in practice would have to give way to the will of the House of Representatives. Further the best talent naturally gravitates to the Lower House, where alone rewards of office are to be obtained.

The Lower House of the Commonwealth Parliament is called the House of Representatives. It is directly elected by the people mostly in single member constituencies. The number of representatives for the several States is based on population, and at present the House consists of seventy six members, one of whom represents the Northern Territory and is not entitled to vote, though allowed to take part in the debate. Tenure is three years, unless the House is dissolved earlier. According to the Constitution, the number of members shall be as nearly as practicable twice the number of Senators, and this provision enables the will of the Lower House to prevail against that of the Senate in any joint conference.

Franchise and qualifications for membership are the same as those for the Senate. Voting is compulsory. The preferential system of voting has been in

The House of
Representatives:
Composition and
Tenure

Compulsory and
Preferential Vot-
ing

vogue. The voter is compelled to mark his preferences. If no candidate obtains an absolute majority in the first count, the candidate lowest in the list is eliminated and his votes are distributed among his second preferences; and this continues until one candidate has obtained the absolute majority. This system has not produced satisfactory results.

The powers of the Federal Parliament already
Powers of the Lower House enumerated are exercised virtually by the House of Representatives. Money Bills can originate in it only. It initiates most of the legislative proposals as the Ministry is largely drawn from it and responsible to it.

The Speaker of the House is elected from among
Organisation and Procedure its members on the meeting of every Parliament, generally on party lines. He may be removed from office by a vote of the House. The British tradition of allowing the same person to continue in office until he chooses to retire has not been followed.

A member may resign his place by writing to the Speaker. If he fails to attend the House without its permission for two consecutive months, he shall vacate his seat. One-third of the total number of members is the prescribed quorum for a meeting of the House. All questions are determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal and then he shall have a casting vote.

Business is done in the House generally on the same lines as those followed in Great Britain. 'Stonewalling', the Australian term for persistent obstruction, has led to the imposition of a time limit on speeches and the adoption of the 'closure' system. The House was long the pivot of political life until the Labour caucus established its power and converted it into a registering house for its decisions.

Men of leisure and means are few in the Commonwealth. Business has greater attractions than politics. A political career in Australia is neither sufficiently lucrative nor of any great social importance. The Lawyer element which is so prominent in the legislatures of other countries is scarcely represented in the Commonwealth Parliament. Naturally all this has affected the level of attainments among Australian politicians. Though there has been no dearth of men of shrewd intelligence and practical ability, the legislature has suffered by absence from it of "the well-stored and highly trained minds capable of taking a broad view of political and economic questions."

The Judicial power of the Commonwealth is vested in a Federal Supreme Court called the High Court of Australia, consisting of a Chief Justice and five other judges appointed by the Governor-General in Council. It has original as well as appellate jurisdiction. It deals with all matters arising under treaties between the States of the Commonwealth, or affecting consuls or representatives of other countries and other matters as

Judiciary:
Composition and
Powers

empowered by Parliament. It hears appeals from the decisions of its own Justices exercising original jurisdiction and from the judgment of any Federal Court or of the Supreme Court of any State. Its decisions are enforced by State machinery.

Thus the Australian Judiciary has not the complete federal character of the United States Judiciary. In the United States, the Federal Courts, ranging from the Courts of First Instance to the Supreme Court, are set apart from the State Courts. Each system is independent of the other and no appeal is allowed from the one to the other. But in Australia the State Courts have jurisdiction in federal matters and an appeal lies from them to the High Court.

The judges hold office during good behaviour. They cannot be removed except by the Governor-General in Council on an address from both Houses of Parliament in the same session, praying for such removal on the ground of 'proved misbehaviour or incapacity.' Their remuneration shall not be diminished during their tenure of office.

No racial differences or religious conflicts divided the people of the Australian Commonwealth as they did in the Dominion of Canada. Just as it was the economic issues that played a most important part in the genesis of a federal union, it was questions of land and tariff that in the beginning led to a conflict of interests between the 'squatters' and the 'fr

Parties and
Party Organisa-
tion

selectors', and the Free Traders and the Protectionists. But even such differences were not sufficiently strong and continuous to give rise to two prominent parties either in Parliament or in the country. So far as the legislature was concerned, there were merely the two parties of the Ins and the Outs, the Government Party and the Opposition Party, and members transferred their adherence from one to the other as their self-interests prompted. In fact, but for the power and influence of the press, people would have been left without any guidance.

The emergence in the last decade of the 19th century of the Labour Party introduced at once a new factor into Australian politics. The Labour Leaders formed Trade Councils and other organisations on the basis of strict party discipline. These organisations increased in strength, and the two former Parliamentary parties, divided directly on Protection or Free Trade, were forced to bid for the support of Labour.

The Parliament of 1900 contained three parties for the first time, which naturally did not make for ministerial stability. Ministries rose and fell, because of Labour support or withdrawal. Labour itself had two short spells of office. But it soon consolidated its position and completely captured the legislature. It owed its success to the adoption of the method of 'caucus' rule. As in the opinion of Bryce, the dominance of the parliamentary caucus has been Australia's most distinctive contribution to the art of

politics it may be useful to describe, briefly its actual working.¹

The members of the party in Parliament met together at least once a week and
 The Caucus Rule freely discussed within closed doors the several measures before the legislature and by a majority vote arrived at particular decisions. These had to be implicitly obeyed by every member of the party on pain of losing his seat and also his means of living. Parliamentary discussion was therefore a waste of time, and if Labour happened to be in majority, Parliament merely registered its decisions. Even the Leader of the party, when summoned to form an administration had no choice but to submit the names of those recommended by the caucus, with the result that each Labour minister considered himself responsible to the caucus and not to Parliament for his actions. Under the cloak of Parliamentary forms, the caucus ruled and held the legislature under its thumb.

The success of the Labour party compelled the other two parties to join hands under the title, the National Party and borrow its organisation, though not strictly its methods. Unfortunately for Labour, a schism occurred in its ranks; also its socialist policy and financial measures brought discredit and created

¹ Bryce, *Modern Democracies*, Vol. II, Chap. XLIX on "Australian Parties and Policies" contains a brilliant analysis and description of the Labour Party organisation, its aims and methods.

distrust. There, has been consequently a great setback to Labour. However there has been a division in the ranks of its opponents also, and two new parties have arisen, the United Australia Party and the Country Party who between themselves have managed to keep out Labour. But how long the forces of coalition can continue to hold against it, it is difficult to predict.

Party organisation in the country was again the work of Labour. It was founded on the local trade union. The Council of trade unions and the Political Labour Leagues helped to increase the influence of Labour in the country. No special political agents were needed for canvassing or propaganda work, as the trade union officialdom could easily arrange to let the people know its programme and bring the electors up to the polling booth. Women suffrage added largely to the strength of the party, because the wives of labourers could be induced to accompany their husbands and vote, while the women of the higher classes fought shy of the poll.

CHAPTER XX

THE GERMAN REICH

The Weimar Constitution

Origin and Features of the Constitution

Towards the close of 1918 the old Germanic Confederation went to pieces. With the fall of the German Princes and the establishment of Soviets (Workers' Councils) and republican governments in the different states, the Bundesrath ceased to be the pivot of the Empire. The announcement of the abdication of the Kaiser and of the establishment of a provisional government under the leadership of Ebert was followed by the issuing of a decree of the new government which ran thus: "Comrades, this day has completed the freeing of the people. The Emperor has abdicated, his eldest son has renounced the throne. The Social Democratic Party has taken over the government.....The new government will arrange for an election of a Constituent National Assembly, in which all citizens of either sex who are over twenty years of age will take part with absolutely equal rights. After that it will resign its powers into the hands of the new representatives of the people."

The Constituent National Assembly was elected, and met at Goethe's Weimar on February 6, 1919, and

at once proceeded to the work of framing a Constitution. This was completed on July 31, and the permanent Constitution came into effect from August 11.

The new Republic is called the German Reich. The word 'Reich' has no imperialistic significance. The nearest English equivalent for it is Realm or Commonwealth. The component states of the Reich are Prussia, Bavaria, Wurtemberg, Hesse, Brunswick, Thuringia and four others. Each of these states except Prussia has a diet of only one Chamber, generally called the Landtag. Prussia alone has in addition to the Landtag a State Council (Staatsrat) elected by the provincial assemblies on the basis of one representative for every fifty thousand people.

The preamble and Article I make it clear that the Constitution derives its authority from the people, as that of the United States of America. "The German people, united in every branch and inspired by the determination to renew and establish its realm in freedom and justice, to be of service to the cause of peace at home and abroad, and to further social progress has given itself this Constitution." "The German Reich is a Republic. All state authority emanates from the people." The Constitution may however be amended without a reference to the people if the two Houses of the Legislature agree.

The German Constitution is, unlike that of the United States, one of the longest documents of its kind. It contains a large mass of unnecessary details relating to economic and social matters which in other constitutions have been left to be settled by ordinary legislation. The most striking feature is Part II which deals with the Fundamental Rights and Duties of Germans. It is divided into five sections and contains exhaustive provisions about the Rights of the Individual, the Life of the Community, Religion and Religious Associations, Education and Schools and Economic life. The Table of Individual Rights is very imposing. All Germans are declared equal before the law. Men and women have the same civic rights and duties. Personal liberty is inviolable. Sanctuary of private residence and punishment only after due process of law are provided for. Freedom of opinion "by word of mouth, writing, printed matter or picture or in any other manner" is guaranteed. Secrecy of correspondence is declared inviolable and no censorship shall be enforced. Provisions relating to the Life of the Community are equally noteworthy. Motherhood has a claim upon the protection and care of the State. "By means of legislation opportunity shall be provided for physical, mental and social nurture of illegitimate children, equal to that enjoyed by the legitimate children" (Art. 121). The right to assemble peaceably and unarmed, to form unions and associations and to petition is guaranteed. It is the duty of

Imposing Table
of Rights

every German to undertake the duties of honorary offices according to the provision of the laws, and all citizens are bound to render personal service for the State and the local authorities. Every one on leaving school is provided with a copy of the Constitution. The section which deals with the organisation of economic life is perhaps the most interesting. Labour is declared to be under the special protection of the Reich. Employment must be provided to every German citizen according to his capacity and if no work can be found for him provision shall be made for his support. District Economic Councils and an Economic Council for the Reich shall be so formed as to give representation to all important vocational groups in proportion to their economic and social importance.

But as the Reich has full power under the Constitution to legislate on any of the above subjects, the rights and guarantees are not of much value. In fact they have been disregarded in practice. Germany has given ample proof that an imposing Bill of Rights in a Written Constitution affords no security for the enjoyment of individual rights and for the maintenance of the Rule of Law.

Another feature of the Constitution is that it places great limitations on the constituent States. Every State should have a republican form of government and provide for a representative legislature based on universal direct suffrage, secret ballot and proportional representation. State boundaries may be altered and

Not a true federation

new states created with or without the consent of the States. Where a State government does not give its consent, the will of the people may be ascertained by a plebiscite and given effect to by the Reich. The President of the Reich may make use of armed forces to compel a State to perform the duties imposed on it by the Constitution or by the laws of the Reich. No regard has been paid to the principle of State equality in the composition of the Federal Second Chamber. Again, the method of the division of powers between the Reich and the States gives ample evidence of the subordination of the latter. Germany may not therefore be classed among the true federations of the world.

In the division of powers, the principle adopted is the same as in the United States Constitution. The powers of the Reich government are definitely enumerated and whatever authority is not given to it expressly or by implication, is to be exercised by the States. But powers granted to the Reich cover such a wide area that the residual authority of the States is very much circumscribed.

The Reich has exclusive jurisdiction over foreign relations, colonial affairs, military organisations, coinage, posts and telegraphs, customs, immigration, extradition, naturalisation (Art. 6). It has full control over taxation for federal purposes and may appropriate taxes or other revenues of the various States (Art. 8).

Art. 7 gives the Reich power to legislate, not exclusively, upon twenty subjects such as industry and

mining, poor relief and public health, insurance, banking and currency, railways, navigation. Presumably this is the field of concurrent jurisdiction in which a Reich law overrides that of the State.

Further with regard to certain matters like education and land laws, the Reich may by legislation lay down fundamental principles which the States shall have to follow. Thus the German National Government has been given under the Constitution a much wider scope of power than that of any other federation.

In case of any doubt or difference of opinion as to the compatibility of any State law with that of the Reich, an appeal may be made by either party to the decision of the Supreme Court established by a law of the Reich. This court has also jurisdiction over all interstate disputes. In this respect the German Constitution differs from that of the United States. In the latter the power to declare any law void on the score of its unconstitutionality rests with the ordinary Federal Courts. In Germany it has been given to an extraordinary tribunal.

There are three methods of amendment: i. The Reichstag (National Assembly) may pass an amendment if two-thirds of its total members are present and if two-thirds of the votes cast are in its favour. If the Reichsrath (National Council) approves of this amendment by a two-thirds majority, the President shall publish it as law. ii. If the National Council does not approve of it, it may

demand an appeal to the people within two weeks. The people's decision shall be final. If however, the Council does not choose to ask for a referendum, the President shall promulgate the amendment. iii. An amendment may be proposed by Popular Initiative. It shall go before the people and be carried into law if a majority of the qualified voters are in its favour. In this respect the German Constitution may be compared with that of Switzerland.

The President is the executive head of the Reich. He is elected by the whole German people. Any German who has completed his thirty-fifth year is eligible. The election is by the direct vote of all adult citizens. A clear majority is required at the first poll. If no candidate secures it, a second ballot is held within two weeks and the result decided by a mere plurality of votes. The term is seven years. There is no limit to the period of re-election. No provision is made for a vice-president.

The Reichstag may demand the President's dismissal by a resolution of two-thirds majority. He is then suspended. The Chancellor takes his place and orders a referendum. If it is in the President's favour, he is reinstated and serves a fresh term of seven years, and in this case the Reichstag shall be dissolved and new elections held. If the result of the referendum is against the President, a new President is elected. The President may also be impeached by the Reichstag before the Supreme

Judicial Court of the Reich for a culpable breach of the Constitution or of a law of the Reich.

The powers of the President include supreme command over the armed forces, appointments and removal of the officers of the Reich, execution of federal laws, preservation of peace and foreign negotiations. But the declaration of war or the conclusion of peace depends on the passing of a law of the Reich. In legislation he has power to appeal to the people against the decision of the Reichstag. But all his orders and directions shall not be valid unless countersigned by the Reich Chancellor or the concerned minister.

Though not comparable to the President of the United States, he is not so weak as the French President, nor is he, like the Swiss President, the chairman of the Board of Directors of a Joint Stock Company, bound to obey the instructions of its shareholders. His election by the people and his power to appeal to them against the decision of the Reichstag and to dissolve it, place him in a separate category. Much however depends on the personality of the occupant of the office.

As in other countries, real executive power is vested in the cabinet. It is composed of the Chancellor and about twelve more ministers. The Chancellor is nominated by the President, and the other ministers are appointed by him on the nomination of the Chancellor. All the ministers are responsible to the Reichstag, though they need not be members of it. But Art. 56 lays down that

the Chancellor determines the main lines of policy for which he is responsible to the Reichstag and that within these lines, each minister directs independently the department under his charge, for which he is personally responsible to the Reichstag. Any one minister should resign if confidence in him be withdrawn by an express resolution of the Reichstag.

The Chancellor and the ministers and the officials appointed by them may attend the sittings of the Reichstag and its committees, and take part in the proceedings. Ministers may be impeached by the Reichstag before the Supreme Court of the Reich for any wrongful violation of the Constitution or of the laws of the Reich.

The Government of the Reich decides all questions by a majority of votes. In case of a tie, the presiding member gives the casting vote.

The Legislature

The Reichsrat (National Council) is the second chamber of the German Reich. It is unique in its composition. Unlike the United States and Switzerland, where the States or the Cantons are equally represented in their second chamber, in the German Reichsrat representation is based on the population of each State, one member for a million inhabitants. But a State must at least have one representative, any surplus fraction counting as a full million under certain conditions. No State may, however have more than two-fifths of the total member-

The Reichsrat

Unique composition

ship of the House. The object of this provision is to restrict the quota of Prussia which contains more than two-fifths of the entire German population and would therefore swamp the House by its representatives, if the numerical basis of representation had not thus been qualified. Representatives of the States are not elected by the people, but nominated by their Governments, which usually send members of their ministries. The present strength is 66 of which Prussia claims 26 votes and Bavaria 10.

Every bill introduced by Government into the popular Chamber must have received the preliminary consent of the Reichsrat. In case of its objection, Government must state it when introducing the bill. The Reichsrat may prepare a bill and submit it to Government which must place it before the Reichstag with its opinion. It has a right to object to any bill passed by the Reichstag and compel it to reconsider. On the whole, the Reichsrat is not a coordinate chamber with the Reichstag in the field of legislation. Laws are enacted by the Reichstag alone and do not require the consent of both the chambers as in the United States. The Reichsrat has no special executive or judicial functions, such as the ratification of treaties, confirmation of appointments and trial of impeachment cases. But Government must inform the Council of its administrative policy and measures and should summon its Committees to take part in important discussions.

The Reichsrat and its Committees are presided over by a member of Government Organisation who may also join in its debates. Other members of Government are entitled, and if requested are bound, to take part in the proceedings of the Council and its Committees. In Committees appointed by the Reichsrat from its members no State shall have more than one vote. In the ordinary sessions a simple majority of votes is required for a decision.

The Reichstag (National Assembly) is the popular chamber of the German Reich. It is composed of deputies elected for four years. Franchise is universal and direct. The strength is not fixed, but depends on the number of qualified voters in the Reich. By the electoral law of 1920, proportional representation has been established and one seat given to every 60,000 voters. The country has been divided into thirty five districts. The different parties draw up lists of candidates for each district and the total number of votes cast for each party is divided by 60,000 and the quotient is the number of seats to which that party is entitled. Surplus votes for each party in all the districts are then added together and divided by 60,000 and extra seats assigned according to the quotient. At present there are 647 deputies. Officials and members of the Military Forces are permitted to stand for election as deputies. In no other country has this been allowed.

Election disputes are not heard by the ordinary courts as in England or by the legislature as in the United States, but by a joint electoral commission composed of the deputies of the Reichstag and the judges of the highest administrative court. Its decisions are final.

The constituent function of the Reichstag has been already described under amendment.

Functions:
Legislative As regards ordinary legislation, it discusses bills introduced into it by Government or by private Deputies. A bill passed by it does not go to the other chamber for its assent. It is submitted directly to the President and takes effect two weeks after it is promulgated by him. If the Reichsrat sends its objections to the cabinet within two weeks of its passing, the law shall have to be reconsidered by the Reichstag and on its being passed by a two-thirds majority shall either be published by the President or submitted to the people.

In the field of executive it has great power. A
Executive functions declaration of war can be made only by it, while treaties and alliances require its approval. The Chancellor is responsible to it. By express resolution of want of confidence in a particular minister, it may compel him to resign. It has the right to set up committees of enquiry into administration and call for necessary evidence. There is a Standing Committee for foreign affairs which may continue its work beyond the sessions of the Reichstag. A Standing Committee for the protection of the rights

of the representatives of the people as against the Government of the Reich is also appointed by the Reichstag for the period when it is in session and even after the expiration of its term of office, till a new Reichstag is elected.

Organisation The Chancellor and the ministers of the Reich and officials appointed by them may attend the sittings of the Reichstag and its committees. The States are entitled to send plenipotentiaries to these sittings to place their points of view on the subjects of discussion. The representatives of the Government of the Reich must be heard at any time without regard to the Order of the Day, but are subject to the authority of the Chair. Unless prescribed otherwise in the Constitution, a simple majority of votes is sufficient for a decision.

As in other legislative chambers, questions may be addressed to the ministers in writing. The answers are printed and read by the concerned minister. But an interpellation must be signed by thirteen deputies and sent to the presiding officer who fixes a date for discussion. The minister is not bound to accept an interpellation, but he generally does. However no debate follows the minister's reply unless fifty deputies demand it. In any case no vote is taken as in France. The interpellation is generally talked out. It serves merely as an opportunity for the several party leaders to declare their views on important public questions and to draw out the Government or put it on

its defence. A defeat of the ministry can be brought about only by a special resolution of want of confidence in it.

i. A bill passed by the Reichstag shall before its publication be submitted to the people, if the President so determines within one month. ii. One-third of the members of the Reichstag may ask for postponement for two months of the promulgation of a Reichstag bill. In this case if one-twentieth of the registered voters demand a referendum, the President shall submit it to the people.

Direct Legislation by the People

The Referendum

One-tenth of the registered voters may submit a draft bill to the Government. If the latter approves of it, it shall introduce it into the Reichstag, and have it enacted into law according to the usual procedure. But if it does not approve of the draft bill, it must be submitted to the people for final decision. A simple majority of those actually voting is sufficient for its adoption.

Initiative

The conditions laid down for both the referendum and the initiative are ordinarily so difficult that they cannot be freely used. The referendum may however prove, as it has proved since, to be a powerful weapon in the hands of a close-knit national organisation to achieve its aims on the tide of transient popular enthusiasm.

The Judiciary

The ordinary civil and criminal jurisdiction is exercised by the High Court of the Reich (Reichsgericht) and the Courts of the States (Art. 103). The Constitution has not provided for any subordinate federal courts as in the United States. The State Courts have competence to try all cases relating to state and federal laws. The High Court of the Reich is the appellate court in all such disputes. It has also an original and final jurisdiction in cases of treason. It is composed of 102 judges and its work is done in sections, four for criminal and five for civil cases. All ordinary judges are appointed for life and may be removed or punished only as the result of a judicial decision.

The High Court has no power to decide on the constitutionality of a Reich law. This has been specially reserved for the Supreme Court (Staatsgerichtshof). This Supreme Court established in 1921 not only determines questions arising out of the interpretation of the Constitution and all disputes between the Federal Government and the States and between one State and another, but also tries impeachments of the President and ministers. Protection to individuals against the orders and decrees of the administrative authorities is given in the administrative courts. Special courts have been established to try all civil disputes arising from the relationship between the employers and the employed.

Parties

Party alignments have not been on any permanent basis in Germany. This has affected the stability of the different ministries. Till very recently the German Reich resembled France in its fleeting cabinets.

The Right consists of the Nationalists and the German People's Party. Today they are all the adherents of Herr Hitler and have captured the country by their intense campaign and fervid appeals. The Socialists and the Communists occupy the Left. They were once a great force, but are now under a cloud having failed to utilise opportunities while in power. The Centre is made up of a number of miscellaneous groups which do not count at all for the present. The Hitlerites (Nazis) are now complete masters of the situation.

Vocational Representation

In all countries studied so far, political representation is on a geographical and population basis. The country is divided into a number of districts according to population, each district being represented by one or more members in the legislature.

It is true that a citizen has in common with his territorial neighbours many interests such as proper drainage, good roads, water supply and lighting, schools and hospitals. But he has other vital interests also which transcend a territorial electoral area and which cannot be adequately safe-guarded by the territorial

representative. For example, a citizen may be a lawyer and have a number of things in common with his professional brethren in other districts. Unless such vocational interests are given channels of expression and representation, citizenship loses its value. In other words, representation in a modern state must not be merely territorial, but functional and vocational as well.

The German Reich was one of the first States to provide in its Constitution for functional and vocational representation. The Reich Economic Council A Reich Economic Council has been created in which all economic groups are represented. It has power to scrutinize the economic measures of the Government and offer its advice. It may propose such bills itself. In that case the ministry must lay them before the Reichstag. It may ask questions, make enquiries of the Government regarding economic and industrial matters. Its work is done in twenty permanent Committees. The Council meets once in two months. The Reich cabinets have been considerably influenced by the Council's opinion. The Council has helped to mitigate class temper by bringing about *rapprochement* between employers and workers. Its creative work has been appreciated by successive Chancellors of the Reich and also by the Ministers in charge of Economic affairs and Labour.

CHAPTER XXI

THE UNION OF SOVIET SOCIALIST REPUBLICS

(U.S.S.R.)

In March 1917, as the result of a popular rising, the Czar's Government was over-
Genesis of the Union thrown and Nicholas II abdicated.

The Duma set up a provisional government under Prince Lvov, but it had to be reorganised several times in the course of the year, till at last in November 1917 the Bolshevik Socialist Party took possession of Petrograd, seized the government authority and handed it over to the All-Russian Congress of Soviets.

The Fifth Congress adopted on July 10, 1918 the constitution of the new state, the Russian Socialist Federal Soviet Republic. In December 1922, delegates from four chief Soviet Republics met at Moscow and concluded a treaty of Union, by which a Union of Socialist Soviet Republics was set up. This Union (U.S.S.R.) consisted of the Russian Socialist Federal Soviet Republic and three others. On December 20, 1922 these were constituted into one state by the will of the peoples assembled at the Congress of their Soviets. Three more republics joined the Union later.

The Soviet State as outlined in this Constitution was in an embryonic stage, and its forms and institutions

necessarily required readjustment in the light of experience gained in the actual working of the constitutional machinery. A Constitution Commission was therefore appointed with Stalin as its chairman to prepare the draft of a new constitution. The draft was duly prepared and published for discussion by the whole population. It was considered by the All-Union Congress of Soviets in November 1936. On its approval, the Constitution became law.

The Union of the Soviet Socialist Republics is a federal State formed on the basis of the voluntary association of the Soviet Socialist Republics with equal rights. It consists now of eleven units, *viz.*, Russian Soviet Federated Socialist Republic (R.S.F.S.R.), Ukrainian S.F.S.R., White Russian S.F.S.R., Azerbaizan S.F.S.R., Georgian S.F.S.R., Armenian S.F.S.R., Turkmen S.F.S.R., Uzbek S.F.S.R., Tadzhik S.F.S.R., Kuzakh S.F.S.R. and Kirghiz S.F.S.R. Each of these units has within its jurisdiction territories, provinces, autonomous provinces, regions and districts, cities and villages governed by their own soviets of toilers' deputies.

The Union is a voluntary association of equal peoples. Each Union republic retains its right freely to secede from the U.S.S.R. This right is a peculiar feature of the Soviet Constitution. No other federal constitution contains a similar provision; on the other hand, in every other case the union is held to be an in-

Right of Secession

dissoluble one. The Civil War settled the question of secession once and for all, so far as the United States was concerned. Her example has been followed by all subsequent federal States. The proposal of Western Australia to break away from the Australian Commonwealth was admitted to be fraught with grave constitutional difficulties.

Another peculiar feature of the constitution of the U.S.S.R. is the great prominence given to the special and economic organisation of the State. The U.S.S.R. is a socialist state of workers and peasants. Its political foundation is formed by the soviets of toilers' deputies which have grown and become strong as the result of the overthrow of the power of the landlords and the capitalists and the conquests of the dictatorship of the proletariat. All power belongs to the toilers of the town and village in the form of soviets of toilers' deputies.

The economic foundation of the U.S.S.R. consists in the socialist system of economy and socialist ownership of the implements and means of production, firmly established as the result of the liquidation of the capitalist system of economy and the abolition of exploitation of man by man. Alongside the socialist system of economy which is the dominant form of economy in the U.S.S.R., the law allows small private economy of individual peasants and craftsmen based on individual labour and excluding the exploitation of the labour of others. The personal ownership by citizens of their income from work

and savings, home and auxiliary household economy, of objects of domestic and household economy, as well as objects of personal use and comfort is protected by law. Work in the U.S.S.R. is the obligation of each citizen capable of working, according to the principle, "He who does not work shall not eat." In the U.S.S.R. the principle of socialism "From each according to his ability, to each according to his work," is being realised.

The Constitution provides an elaborate table of rights and obligations of Soviet citizenship, some of which are unique. Citizens of the U.S.S.R. have the right to work—the right to receive guaranteed work with payment therefor according to its quantity and quality. This right is ensured by the socialist organisation of national economy, the steady growth of the productive forces of Soviet society, the absence of economic crises, and the abolition of unemployment.

Citizens have also the right to rest and this is ensured by the reduction of the working day to seven hours for the overwhelming majority of workers, provision for annual holidays with pay for workers and employees and the establishment of a network of sanatoriums, rest houses and clubs for the accommodation of the workers.

The right to material security in old age as well as in the event of sickness and loss of capacity to work is ensured by the wide development of social insurance of

Sickness and Old
Age Pensions

workers and employees at the expense of the State, free medical aid and the provision of health resorts for their use.

Citizens of the U.S.S.R. have the right to education. The State provides for universal compulsory elementary education, free of charge, as well as higher education, by the system of stipends for the great majority of students in higher schools, instruction in schools in the native languages and the organisation of free industrial, technical and agronomic education for the toilers at the factories, State farms, machine and tractor stations and collective farms.

Women in the U.S.S.R. are accorded equal rights with men in all fields of economic, cultural, social and political life. They have the same right to work and rest, payment for work, social insurance and education. They enjoy in addition State protection of the interests of mother and child, maternity leave with pay and the advantages of a wide network of maternity homes, nurseries and kindergartens.

According to Art. 123 of the Constitution, the equality of the rights of the citizens of the U.S.S.R., irrespective of their nationality or race, in all fields of economic, social and political life is an irrevocable law. Any direct or indirect restriction of these rights or conversely the establishment of direct or

indirect privileges on account of race or nationality is punishable by law.

Freedom of conscience is ensured by the separation of the church from the State and the school from the church. Freedom to perform religious rites and freedom of anti-religious propaganda is recognised for all citizens.

The citizens of the U.S.S.R. are guaranteed freedom of speech, freedom of the press, freedom of assembly and meetings, and freedom of street processions and demonstrations. These rights are ensured by placing at the disposal of the toilers and their organisations printing presses, supplies of paper, public buildings and other material conditions necessary for their realisation. The citizens are ensured the right of combining in public organisations, sport and defence organisations, cultural and technical and scientific societies, and for the most active and conscientious citizens from the ranks of the working class and other strata of the toilers, of uniting in the Communist Party.

Inviolability of the person is guaranteed. No one may be subjected to arrest except upon the decision of a court or with the sanction of the prosecutor. The inviolability of the homes and the secrecy of correspondence are protected by law. Foreign citizens are also granted the right of asylum. Every citizen of the U.S.S.R. is obliged to safeguard and consolidate public

socialist property' as the sacred inviolable foundation of the Soviet system, as the source of wealth and might of the fatherland, as the source of the prosperous cultural life of all the toilers. Persons attempting to steal or destroy public socialist property are enemies of the people. Universal military service is the law. It is the honourable duty of each citizen to serve in the Red Army of the Workers and the Peasants. The defence of the fatherland is the sacred duty of every citizen. Treason to the fatherland, violation of oath, desertion to the enemy or espionage for a foreign State is punishable with the full severity of law as the most heinous crime.

Division Powers on the True Federal Prin- ciple	of the	The jurisdiction of the U.S.S.R. as represented by its supreme organs of power and organs of State adminis- tration extends to:—
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representation of the Union in international relations, conclusion and ratification of treaties with other States; questions of War and Peace; admission of new republics into the U.S.S.R.; supervision of the observance of the Constitution of the U.S.S.R. and ensuring conformity of the constitutions of the Union republics with the Constitution of the U.S.S.R.; approval of alteration of boundaries between Union republics; organisation of the defence of the U.S.S.R. and the direction of all the armed forces; foreign trade on the basis of State monopoly; protection of State security; establishment of national economic plans; approval of the unified State budget of the U.S.S.R. as well as the taxes and revenues entering

into the U.S.S.R. union republic and local budgets; administration of banks, industrial and agricultural establishments as well as trading enterprises of all-Union importance; administration of transport and means of communication; direction of monetary and credit system; organisation of State insurance and property; contracting and granting loans; establishment of the fundamental principles for the use of land as well as the exploitation of minerals, forests and waters; establishment of the fundamental principles in the field of education and protection of public health; organisation of a unified system of national economic accounting; establishment of basic labour laws; legislation on judicature and legal procedure, criminal and civil codes; laws on citizenship of the Unions, laws on the rights of foreigners; and the passing of all-Union amnesty acts.

The sovereignty of the component Union republics is restricted only within the limits set forth above. Outside of these limits each union republic exercises independently its State power. The U.S.S.R. protects the sovereign rights of the Union republics. Every Union republic has its own constitution which takes into account the specific features of the republic and is drawn in full conformity with the Constitution of the U.S.S.R. The territory of the Union republics may not be changed without their consent. The laws of the U.S.S.R. have the same force in the territories of all-Union republics. In the event of a Law of a Union republic differing from an all-Union law, the latter is operative. A single

Union citizenship is established for all citizens of the U.S.S.R. Every citizen of a Union republic is a citizen of the U.S.S.R.

According to Art. 146 amendment of the Constitution of the U.S.S.R. is effected only by the decision of the Supreme Council of the U.S.S.R. (the Federal Legislature) when adopted by a majority of not less than two-thirds of the votes in each of its chambers. Thus the important power of amending the Constitution is vested in the same body that has the power of ordinary federal legislation and the only difference lies in the two-thirds majority required for Constitutional changes. The Constitution of the U.S.S.R. must therefore be classed under flexible Constitutions of the world, rather than under rigid ones like those of the United States, the Australian Commonwealth and Switzerland.

THE ORGANISATION OF THE CENTRAL AUTHORITY

THE LEGISLATURE

The supreme organ of State power of the U.S.S.R. is the Supreme Council. It exercises all the rights vested in the U.S.S.R. according to the Constitution, in so far as they do not enter, by virtue of the Constitution, into the competence of the organs subordinate to it, *i.e.*, the Presidium, the Council of the People's Commissars of the U.S.S.R. and the People's Commissars of the U.S.S.R.

The legislative power of the U.S.S.R. is exercised exclusively by the Supreme Council of the U.S.S.R. It consists of two Chambers, the Council of the Union and the Council of Nationalities. The former corresponds to the Lower Chamber and the latter to the Upper Chamber of the other Constitutions. The Council of the Union is elected by the citizens of the U.S.S.R. on the basis of one deputy for every 300,000 people. The Council of Nationalities consists of deputies appointed by the Supreme Councils of the Union republics and soviets of toilers' deputies in the autonomous provinces on the basis of ten deputies from each union republic, five deputies from each autonomous republic, and two deputies from each autonomous province. The deputies are elected for a period of four years. The principle of the composition of the legislature is evidently that the Council of the Union is to represent the people of the Union, while the Council of Nationalities represents the "National" legislatures.

Both Chambers have equal rights. Legislative initiative belongs in equal degree to the Council of the Union and the Council of Nationalities. A law is considered approved if adopted by both Chambers by a simple majority vote in each. Laws passed by the Supreme Council of the U.S.S.R. are published over the signatures of the Chairman and Secretary of the Presidium of the Supreme Council of the U.S.S.R. Sessions of the two

Concurrent Powers

Chambers begin and terminate concurrently. The Chairman and the two Vice-Chairman elected by each Chamber direct its sessions and regulate its internal arrangements. The Supreme Council is convened by the Presidium of the U.S.S.R. Extraordinary sessions may also be convened by the Presidium at its discretion or on the demand of one of the Union republics.

In case of disagreement between the Council of the Union and the Council of Nationalities, the question is referred for settlement to a Conciliation Commission established on the basis of equal representation. If the Conciliation Commission does not come to an agreement upon a decision, or if its decision does not satisfy one of the Chambers, the question is considered for a second time in the Chambers. In the event of the two Chambers not agreeing upon a decision, the Presidium of the U.S.S.R. dissolves the Supreme Council and fixes new elections.

The Supreme Council of the U.S.S.R. elects at a joint session of both Chambers the Presidium of the Supreme Council of the U.S.S.R. Joint sessions are directed in turn by the Chairman of the Council of the Union and the Chairman of the Council of Nationalities.

Deputies to all soviets of toilers' deputies, the Supreme Council of the U.S.S.R.,
 Electoral Sys- Supreme Councils of the Union republics, territorial and provincial soviets of
 tem toilers' deputies, the city and village soviets of toilers' deputies, are elected by the electors on the basis of uni-

versal, equal and direct suffrage by secret ballot. All citizens above the age of 18 have the right to vote at elections and to be elected as deputies, with the exception

of the mentally defective and those
 Universal, Equal, deprived legally of electoral rights.
 Direct Franchise

Elections of deputies are equal; every citizen has the right to elect and be elected irrespective of race or nationality, his religion, educational qualifications, his social origin, property status and past activity. Women have the right to elect and be elected on equal terms with men. Elections are direct and voting is secret. An absolute majority is required. There is a provision for a second ballot as in France. Candidates are put forward for election according to the electoral districts. The right to put forward candidates is confined to social organisations and societies of the toilers; Communist Party organisations, trade unions, co-operative societies, youth organisations and cultural societies. Every deputy is obliged to render account to the electors

of his work and the work of the soviet
 Recall of Deputies of toilers' deputies, and he may at any
 time be recalled in the manner estab-
 lished by law upon decision of a majority of the
 electors.

THE EXECUTIVE

The executive functions of the U.S.S.R. are exercised by three organs, namely, the Presidium of the Supreme Council of the U.S.S.R., the Council of the

People's Commissars, and the People's Commissars of the U.S.S.R.

The Presidium is the most important organ. It is, as it were, a Standing Committee of
 Presidium — the Supreme Council and consists at
 Composition present of 37 members, a Chairman, four Vice-Chairmen, a Secretary and 31 members—all elected at a joint session of both Chambers of the Supreme Council of the U.S.S.R. It is accountable to the Supreme Council in all its activities.

The Presidium convenes sessions of the Supreme
 Functions Council and dissolves it in case of disagreement between the two Chambers. It fixes new elections. It may dissolve the Supreme Council on its own initiative or on the demand of one of the Union republics. It conducts a referendum on its own initiative. It has power to rescind decisions and orders of the Council of People's Commissars of the U.S.S.R. and the Councils of People's Commissars of the republics, in the event of their not being in conformity with the law. Between the sessions of the Supreme Council the Presidium attends to its duties. It appoints the various People's Commissars' of the U.S.S.R., subject to subsequent confirmation by the Supreme Council. It awards decorations and exercises the right of pardon. It appoints and replaces the supreme command of the armed forces of the U.S.S.R., declares general or partial mobilisation, ratifies international treaties, appoints and recalls plenipotentiary

representatives of the U.S.S.R. to foreign States and accepts the credentials of foreign diplomatic agents. In short, the Presidium is the crown of the edifice. In certain matters it discharges functions which in other modern constitutions are performed by the King or the President, and in certain others it acts as the Cabinet.

The supreme executive and administrative organ of the State power in the U.S.S.R. is the Council of People's Commissars. It is the Government of the U.S.S.R. and is formed at a joint session of both Chambers of the Supreme Council of the U.S.S.R. It is responsible to the latter and accountable to it. It is composed as follows :—Chairman, Vice-Chairman, Chairman of the State Planning Commission, Chairman of Soviet Control, Chairman of the Art Committee, Chairman of the Higher Education Committee, Chairman of the Committee for the purchase of Agricultural Products and the several People's Commissars of the U.S.S.R.

It issues decisions and orders on the basis of, and in fulfilment of laws in force and supervises their execution. Such decisions and orders have obligatory force and must be carried out throughout the territory of the U.S.S.R. It unites and directs the work of the several People's Commissariats of the U.S.S.R. and of other economic and cultural institutions under its jurisdiction. It takes measures to ensure public order, to defend the interests

of the State and to safeguard the rights of citizens. It exercises general direction in the realm of relations with foreign States. It directs the general up-building of the armed forces of the country. Its members are obliged to give an oral or written reply in the respective Chamber within three days of any question addressed to them by members of the Supreme Council.

The several branches of state administration are directed by People's Commissars of the U.S.S.R. The Commissariats are Defence, Foreign Affairs, Foreign Trade, Railways, Communications, Water Transport and Heavy Industry. The People's Commissars are appointed by the Presidium. Each People's Commissary is the head of a Board responsible for the work under its charge, and has to answer questions addressed to him by the members of the Supreme Council.

LOCAL ORGANS OF STATE POWER AND THOSE OF THE SEVERAL UNION REPUBLICS

The organs of State power in territories, provinces, autonomous provinces, regions, districts, cities and villages are soviets of toilers' deputies. These are elected for a period of two years by the toilers, the ratio of representation being determined by each Union republic. The soviets look to the maintenance of order, observance of laws and the protection of citizen's rights and draw up the local budget. The executive and administrative organs of these soviets are the executive committees elected by them, composed of a chairman, vice-chairman

and other members. They are accountable to the soviets which elected them and also to the executive organ of the higher soviet of toilers' deputies.

The organs of State power in each Union republic are a replica of those of the U.S.S.R., *i.e.*, the Supreme Council, the Council of People's Commissars and the several People's Commissariats. The Supreme Council of each republic is its sole legislative organ. It adopts the constitution of the republic, ratifies the constitutions of the autonomous republics within its jurisdiction, approves the national economic plan and the budget of the republic, exercises the right of amnesty and pardon and elects the Presidium and the Council of People's Commissars of the republic. The Presidium of the Supreme Council of each Republic is composed of a chairman, his deputies and ordinary members. Its powers are determined by the Constitution of each republic. The administration of each republic is left to the Council of People's Commissars of the republic. It is formed by the Supreme Council of the republic and discharges the same functions which the Council of the People's Commissars of the U.S.S.R. performs in respect of the whole Union.

THE JUDICIARY

Justice is administered by the Supreme Court of the U.S.S.R., the supreme courts of the Union republics, territory and province courts, special courts of the U.S.S.R. created by the decision of the Supreme Council and

People's Asso-
ciate Judges

People's Courts. In all courts, cases are tried with the participation of the people's associate judges, with a few exceptions.

The Supreme Court of the U.S.S.R. is the highest judicial organ. It is charged with the Election of Judges of supervision of the activity of all judicial organs of the U.S.S.R. and the Union Republics. The Judges of the Supreme Court and those of the Special Courts are elected by the Supreme Council of the U.S.S.R. for a period of five years. People's Courts are elected for a period of three years by the citizens of the districts on the basis of universal, direct, and equal suffrage.

Court proceedings are conducted in the language of each area. Persons not knowing the language are allowed an interpreter and also given the right to address the Court in their vernacular. In all courts, cases are heard openly and the accused person is ensured the right of defence. Judges are independent and subject only to the law.

The highest supervision of the exact observance of the laws by all the People's Commissariats, and institutions under them, as well as by individual persons holding special posts and also by the citizens of the U.S.S.R. is vested in the Prosecutor of the U.S.S.R. He is appointed by the Supreme Council of the U.S.S.R. for a period of seven years. Prosecutors of the various Union republics, provinces, territories and other local divisions

are appointed by the Prosecutor of the U.S.S.R. for a period of five years. These prosecutors perform their functions independently of any local organ and are responsible only to the prosecutor of the U.S.S.R.

Conclusion	The new Soviet Constitution is a great improvement on that of 1918. Franchise has
	been extended to all adults, with no disqualification for persons of capitalist or social origin or for those belonging to the several religious organisations. The electoral preponderance given to industrial workers as against peasants has disappeared. Direct, equal and secret elections have been provided for in all cases. Fundamental liberties and civil rights have been guaranteed. Within the socialist system of economy, provision has been made for small private economy of individual peasants and handicraftsmen based on individual labour
Some excellent Features	and excluding the exploitation of the labour of others. The Judiciary will be independent. The Communist Party can no longer occupy a privileged position. It can hereafter maintain its ascendancy only through effective propaganda.

Defects	These excellent features may however be rendered nugatory in practical working. The establishment of a second chamber to
	represent the interests of 'national' legislatures may not ultimately conduce to smooth working. Conflict of interests among the different classes of toilers may give rise to difficult political problems. The absence of orga-

nised political parties will surely give the Communists a decided advantage over their opponents. The short tenure of judges and their election by the people may undermine their independence.

But power vested in the people of town and country may turn out to be a tremendous instrument in the shaping of the destinies of mankind. Moscow has, at any rate, made a magnificent gesture to the world. At a time when individual freedom is in great danger, if not actually lost, in various countries, it is good to see Russia taking a great step in the other direction. There is no doubt that Soviet Russia as judged by the new Constitution deserves to be ranked by the side of the two great democracies of the world, the United States and Great Britain.

PART III

CHAPTER XXII

INDIA

With the dawn of the twentieth century a new chapter opened in the history of Great Britain and India. The association of a Liberal Viceroy with a Radical Secretary of State resulted in the introduction of certain salutary reforms and the liberalisation of Indian political institutions. The Minto-Morley Reforms as embodied in the Indian Councils Act of 1909 increased the number of non-official members of the Legislative Councils, partially substituted election for nomination and gave greater freedom of discussion to the non-official members of the legislature. But there was as yet no idea of the introduction of a Parliamentary system for India. The Executive continued to keep in its hands the initiative and control over legislation; the Provincial Governments were merely the limbs of an all-powerful Central Government; while the ultimate responsibility for the Indian Government was vested as heretofore in Parliament and exercised through the Secretary of State for India.

A new situation arose with the outbreak of the Great War. The financial and military help rendered

by India to the cause of the Allies, President Wilson's idea of self-determination and the Home Rule Movement in India itself compelled Great Britain to pay heed to the just demands of the Indian political leaders, and on August 20, 1917 Edwin Montague, on behalf of His Majesty's Government, made the following pronouncement in the House of Commons:—"The policy of His Majesty's Government with which the Government of India are in complete accord is that of increasing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to the progressive realisation of Responsible Government in India, as an integral part of the British Empire."

This momentous declaration was followed by the famous Montague-Chelmsford Report on Indian Reforms in 1918, which served as a basis for the Government of India Act of 1919. The salient features were (i) Provincial Autonomy of a limited kind. There was not only a delimitation of the sources of revenue between the Centre and the Provinces, but also a clear demarcation in the spheres of the two in the fields of legislation and of administration; Provincial Legislatures and Governments were given complete control over the subjects delegated to them; (ii) considerable widening of the franchise and the establishment in the Indian Provinces of legislative councils with increased strength and elected members; (iii) a measure of responsible government in the Provinces. Subjects under provincial control were divided into two compartments, 'Reserved'

and 'Transferred'. The latter were administered by ministers chosen from the elected members of the Councils and responsible to the Councils for their administration; (iv) the establishment of a bi-cameral Legislature in the Centre (The Council of State and the Legislative Assembly) with increased powers of legislation. It contained an elected majority. But the Executive was not responsible to the Legislature. (v) The powers of the Central Government remained practically unchanged. The responsibility of the Governor-General in Council was only to the Secretary of State and through him to Parliament. The Central Government had the superintendence, direction of control of the Provincial Governments in respect of reserved subjects and the administration of provinces other than the nine major ones. (vi) A re-examination and revision of this Constitution at the end of ten years.

The Government of India Act of 1919 did not fulfil the expectations of even those Indian leaders who had set much store by the Declaration of 1917. Distrust of the British Government increased; a great movement of non-co-operation was started; elections to the reformed Councils were boycotted. But the Government succeeded in prevailing upon the moderate and the conservative elements in the country to work the Act. In a short time however the defects of the Dyarchical system in the provinces and the irresponsibility of the Central Executive revealed the true nature of the Act. The majority in the Central Legislature voted for an early revision of the constitution. Opposition to the Act in the

country was stiffening, thanks to the Swarajist Party led by C. R. Das and Motilal Nehru. Resolutions were passed demanding the summoning of a Round Table Conference to recommend a scheme for the establishment of full responsible government. When the Government did not pay any serious attention to these resolutions, the Assembly began to reject systematically all the demands for grants as a constitutional protest, thus compelling the Governor-General to use his extraordinary powers.

At last in November 1927, on the recommendation of the British Government, Parliament appointed a Commission without waiting for the ten years' period to expire. This Statutory Commission consisted of seven Members of Parliament. The appointment of an all-white Commission naturally evoked bitter opposition in India, and even the most moderate Indian politicians refused their co-operation unless its personnel was changed. A compromise was hit upon, by which the Commission was to sit on equal terms with an Indian Committee appointed by the Indian Legislature and there should be joint sittings of the two Commissions in the taking of evidence, and the reports of both should be presented to the Joint Committee of both Houses of Parliament. But this announcement was made too late. The Indian Legislative Assembly refused to elect members to the Indian Central Committee. The Council of State alone chose to co-operate and elected three members. The Viceroy nominated the other three from the Assembly.

The Simon Commission, as it was called, paid two visits to India during the cold season of 1928 and 1929, but was boycotted almost everywhere. Its report was published in May 1930. Indian opinion was decidedly against its recommendations. Viceregal pronouncements and assurances did not allay popular suspicions; and the Civil Disobedience Movement started by the Congress gathered strength from day to day. But the British Government went on its way of constitutional reform and summoned a Round Table Conference to sit in London in November 1931. The most important decisions of the Conference were:—(i) An All-India Federation including the Indian States; (ii) Provincial Autonomy; (iii) Responsibility in the Centre with provision for certain safeguards and for the administration of certain reserved departments; (iv) Widening of the franchise. The Prime Minister closed the Conference with the statement that the view of His Majesty's Government was that the responsibility for the Government of India should be placed upon the Legislatures, Central and Provincial, with such provisions as might be necessary to guarantee the safety of British interests during the period of transition.

The struggle between the Government of India and the Congress had almost paralysed the administration, and an agreement was with great difficulty reached between the two (known as the Gandhi-Irwin Pact) by which the Civil Disobedience Movement was called off and Government agreed to set free all political prisoners and abide by certain conditions. Hence at the Second

Round Table Conference, the Congress through its sole representative, Mahatma Gandhi, took part in its proceedings from September to December 1931. This was followed by the Third Round Table Conference in the winter of 1932. In the final session of the Conference neither the Labour Party nor the Congress participated owing to political discontent in India.

The work of the three Round Table Conferences assumed practical shape in the White Paper of March 1933, which was submitted to the Joint Select Committee of Parliament for examination and report.

The Joint Select Committee consisting of the members of both Houses of Parliament took a large mass of evidence. Its report was published in 1934, and Parliament gave its approval for the introduction by Government of a bill based on the Report. The Bill was published in January 1935. It was passed in both Houses of Parliament by large majorities and received Royal assent on August 2, 1935.

The new Constitution is a Federation, the members of which shall be the British Indian Provinces and the Indian States. As a preliminary step to the establishment of such a federation, the powers of the Secretary of State, of the Government of India under the previous Act and of the Crown over the States are resumed by the Crown and re-distributed. There shall be a Majesty's Representative to exercise the functions of the Crown in its relations to the Indian States.

The Constitution is not derived from the people. It has not been framed by any National Convention. It has been imposed on the people of India by the British Parliament. Some of the provisions were inserted even against the declared opinions of the Indian Delegates who attended the Round Table Conferences. The Constitution lacks therefore the strength of popular consent.

It is one of the longest constitutions on record. The Government of India Act of 1935 deals not merely with the structure of government and the distribution of the supreme power in the state, but sets out in detail rules of legislative and financial procedure, regulations about borrowing, audit and accounts, special provisions for safeguarding the rights of the Civil and Military Services and rules for their recruitment. The Instrument of Accession which fixes the conditions of entry of any Indian State into the Federation and which will have no place in other constitutions forms part and parcel of the Act and has as much binding force as its other sections. Various safeguards against discriminatory legislation add to the bulk of the Act.

The Government of India Act of 1935 (to call it briefly, the Constitution Act) establishes a Federal State composed of the various British Indian Provinces and the Indian States which till now had been enjoying a quasi-international

Accession of
States and the
Establishment
of the Federation

status. The Federation of India shall come into existence on a day fixed by Royal Proclamation only after an address to that effect had been presented to His Majesty by both Houses of Parliament and after the accession of States whose aggregate population is at least half of the total population of all the Indian States and whose Rulers are entitled to choose fifty-two members of the Upper Chamber of the Federal Legislature. A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by its Ruler. The Instrument of Accession shall specify the matters which the Ruler accepts as matters within the competence of the Federal Legislature and the limitations, if any, to which the power of the Federal Legislature to make laws for his State and the exercise of the executive authority of the Federation in his State are respectively to be subject. By the same Instrument the Ruler accepts the obligation of giving effect to the provisions of the Act so far as they are applicable to his State under its terms. A supplementary Instrument may be executed by any Ruler for the purpose of extending the functions to be exercised by the Federal authority in his State. All courts are bound to take judicial notice of every such Instrument of Accession. States which have not chosen to accede before the Royal Proclamation may come into the Federation later. But after the expiration of twenty years from the establishment of the Federation, no State shall be admitted into the Federation by His Majesty

except on an address to that effect from each Chamber of the Federal Legislature.

Theories of federalism and analogies drawn from other federal constitutions are of little avail to students of the Indian Federation. The sheer size of the country, its vast population, the religious and communal discords, the existence of the Indian States—these must have raised most delicate and difficult problems for those responsible for the framing of the Constitution Act. No wonder that the Act is a complicated measure, containing several novelties and anomalies. There seems to be little harmony or symmetry in its design. In the words of Mr. Morgan, the Constitution is like a building which begun in one style of architecture is to be completed in another, in part Gothic, in part Renaissance, and it may well be that the distribution of the stresses and strain of structure will appear in course of time unequal to the burden of its support.

A Federation, as has been stated already, is the result of the union of independent States, which agree by a written instrument to part with some of their sovereign powers. In the Indian Federation, this is true only with regard to the Indian States; in the case of the Provinces the process has had to be reversed. While the Indian States, desirous of joining the Federation, have to part with some of their independent powers, the Indian Provinces have no such powers to surrender, as legally

all powers had been till now centred in the Government of India. The first step therefore in the creation of this new Indian polity is the transference of certain important powers from the Central Government to the Province. In fact, the creation of such autonomous provinces is the first stage on the road to Federation.

Two fundamentally different polities are to be united into one, the autocratic polity of the Absence
of
equality
among
the Units semi-independent Indian States and the autonomous provinces of the country with their British traditions of law and justice, of parliamentary rule and local self-government. Necessarily in such a union, the essential feature of a true federation, namely, equality, must be absent. This is evident from the fact that while the Indian Provinces have no option but to join the federation, the States may enter or not at the pleasure of their rulers. Again such of the States as desire to enter the Federation occupy a position of vantage as against the Indian Provinces, in that on the accession of the prescribed minimum number of States they will be entitled to disproportionate representation in the two chambers of the Federal legislature. Thirdly, the Federal Government may not have the same range of powers in relation to these States as in relation to the Indian Provinces, because this is fixed by the Instrument of Accession executed by the Ruler of each State. The Indian Federation is therefore an obvious anomaly, composed as it shall be of disparate and unequal units in which the powers and authority of the Central Government will

differ as between one constituent unit and another. But from the experience of other federations it may be predicted that in course of time the States shall have to give up their privileged position and fall into line with the Provinces, as the tendency in all federal constitutions has been to strengthen the control of the federal authority over the component units.

The object of the Constitution Act is to unite the whole country under one polity. Federation ^a link between the States and the Provinces Till now there was no constitutional link between the British Provinces and the Indian States. While the British Parliament made laws for British India its control over the Indian States was only indirect, inasmuch as it could be exercised by the Secretary of State only through the Crown and the Governor-General, and the relationship of the States with the Paramount Power was 'quasi-international' and 'primarily consensual'. The All-India Federation will terminate this divided allegiance and establish a constitutional relationship between British India and the Indian States. Because the Federal authorities shall, under the provisions of the Constitution Act, have power to take cognisance of certain specified matters with regard to the Federated States.

A Federated State may not withdraw from the union. No Right of Secession of The Instrument of Accession is in the nature of a Contract. His Majesty has no power to cancel any such Instrument after he has once accepted it, and the Ruler of a Federated State may not claim the right of secession.

An amendment of the Act by Parliament alone can enable a State to secede, but this is extremely difficult to bring about, as the Imperial Parliament will never consent to do so, for the reason that it will be in direct violation of the pledge of the ultimate grant of Dominion status made by the Secretary of State, during the passage of the Bill through the House of Commons.

DISTRIBUTION OF POWERS

In the division of Powers, the Constitution Act follows neither the American nor the Canadian example. In the United States Constitution the powers of the National Government are enumerated, the residue vesting in the States, while in the Dominion of Canada the residue of powers vests in the Dominion Government. In the Indian Federation a different procedure is adopted. There are three lists, the Federal Legislative List, the Provincial Legislative List and the Concurrent Legislative List. In respect of matters enumerated in the Concurrent Legislative List the Federal Legislature as well as a Provincial Legislature have power to make laws, but the Federal Law shall have precedence over the Provincial Law.

The Federal Legislature has power to make laws in respect of matters enumerated in the Provincial Legislative List except for a Province. At the desire of the Legislatures of two or more Provinces, the Federal Legislature can make laws in respect of any provincial matter. Further, the Federal Legislature can legislate for a province if the Governor-General has declared by Proclama-

tion that a grave emergency exists threatening the security of India. Such legislation shall be valid only for six months unless approved by Resolutions of both Houses of Parliament. It can be revoked by the Governor-General at any time. The power of the Federal Legislature to make laws for a Federated State shall be governed by the Instrument of Accession of that State. In the case of a conflict between a Federal Law which extends to a Federated State and a law of that State, the former shall prevail.

The entire field of legislative activity has been sought to be covered by the three lists. Still
 Residual power there may be a residue of subjects not contemplated by the Act. To provide for the exercise of this residual power the Constitution Act lays down that in respect of any matter not enumerated in any of the Legislative Lists, the Governor-General is the authority to decide as to whether the Federal or Provincial Legislature shall make laws. This power of the Governor-General is discretionary, that is to say, he need not take the advice of the ministry in this matter.

The Constitution Act has imposed certain absolute
 Indian Legisla- restrictions on the Federal and the
 tures Provincial Legislatures. The power
 Not sovereign of the British Parliament to legislate for British India has been specifically re-enunciated. Neither the Federal Legislature nor a Provincial Legislature can make any law affecting the sovereign, or the Royal Family or the succession to the Crown, or the

sovereignty, dominion or suzerainty of the Crown, in any part of India or the law of British Nationality or the Army Act, the Air Force Act or the Naval Discipline Act. Neither the Federal Legislature nor a Provincial Legislature can make any law amending any provision of the Constitution Act or any order in Council made thereunder. Further, the previous sanction of the Governor-General in his discretion is necessary for the introduction in either Chamber of the Federal Legislature of any Bill or amendment dealing with matters left to the discretion or the individual judgment of the Governors and the Governor-General, any police force, criminal proceedings in which European British subjects are concerned, companies not incorporated in India, amendment of any Parliamentary Act extending to British India, Federal coinage and currency, the constitution or functions of the Reserve Bank and similar other matters. Further in the Instrument of Instructions issued to the Governor-General it is laid down, "Our Governor-General shall not assent in our name to, but shall reserve for the signification of our pleasure, any Bill regarding which he feels doubt whether it does not offend against the purpose" of certain sections in the Act. A Governor shall reserve for the consideration of the Governor-General a Bill regarding which he has a similar doubt.

The Federal Legislative List contains 59 items.

The following are some of the most important:—His Majesty's naval, military and air forces borne on the

Indian establishment; External affairs, the implementing

of treaties, agreements with other countries, extradition; Ecclesiastical affairs; Currency, coinage and legal tender; Federal Public Debt; Post, Telegraphs, Telephones, etc.; Federal Public Services and Pensions; Federal Works, Lands and Buildings; Imperial Libraries and Museums; the Surveys of India; Ancient and Historical Monuments; the two Universities of Benares and Aligarh; Census; Emigration and Immigration; Railways, Shipping and Navigation; Fisheries; Lighthouses; Aerodromes, etc.; Copyright, inventions, trade marks and patents; Banking and Insurance; Mines and oil-fields; Regulation of labour and development of industries; Salt, Customs, Excise, Taxes on income other than agricultural income; Stamp duty in respect of Bills of Exchange, cheques, promissory notes, insurance policies and receipts; Succession duties; Terminal taxes and taxes on railway fares and rates.

The most important items in the Provincial Legislative List are:—Public Order, Administration of Justice, Constitution and organisation of all Courts except the Federal Court and the fees taken therein; Police, Prisons, Reformatories; Provincial Public Debt; Provincial Public Services and Public Service Commissions; Compulsory acquisition of land; Provincial Libraries and Musuem; Local Government; Public health and sanitation; Registration of births and deaths; Education; Communications (subject to provisions in the other Lists); Agriculture; Land tenures; Forests; Mines and oil-fields (subject to the Federal List); Markets, Fairs and internal trade;

Weights and measures and adulteration of food-stuffs; Unemployment and Poor relief; Betting and gambling; Control of theatres, cinemas, etc.; Land revenue; Excise duties on opium, alcoholic liquors manufactured within the province; Taxes on agricultural income, on lands and buildings, on mineral rights; Capitation taxes; Taxes on professions and trades; Taxes on luxuries, amusements and entertainments; Tolls; Stamp duty in respect of documents other than those specified in the Federal List.

Any other important items not mentioned in the foregoing two Lists may be taken as being included in the Concurrent Legislative List.

The Federal Court shall have power to decide all questions of dispute between the Federation and a Federated State or between the Federation and any of the Provinces which concern the interpretation of the Constitution Act or of an Order in Council made thereunder or the extent of the authority vested in the Federation by virtue of any Instrument of Accession, and similar other matters. An appeal may be taken to the Privy Council from any judgment of the Federal Court which concerns the interpretation of the Constitution Act.

The executive authority of every Province and every Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature. If a Provincial Government does not carry out

Interpretation of
the Constitution
Act

Machinery to
carry out Federal
Laws

the directions of the Federal Government, the Governor-General in his discretion has power to issue the same directions to the Governor concerned whose special responsibility it is to carry them out. If it appears to the Governor-General that the Ruler of a Federated State has in any way failed to fulfil his obligation in the matter of the execution of a Federal law, the Governor-General acting in his discretion may, after considering the Ruler's representations, if made, issue such directions to the Ruler as he thinks fit.

The Federal Legislature and each Provincial Legislature have the right to pass resolutions recommending amendment of certain provisions of the Act (only after ten years of the operation of the Act) which relate to the following matters:—Size and composition of Federal or Provincial Legislatures, number of Chambers in the Provinces, Franchise and method of Elections.

But no amendment can be proposed which would alter the proportion between the number of seats in the Council and that in the Assembly or the proportion between British Indian representation and Indian State representation in either Chamber of the Federal Legislature. The amendment must be moved by a minister on behalf of the Council of Ministers.

Any Resolution thus proposed and passed shall be forwarded to His Majesty by the Governor-General or the Governor as the case may be, with his opinion as well

as that of any minorities affected by the proposed amendment. All these shall be communicated to Parliament. Within six months after the Resolution is so communicated the Secretary of State shall lay before Parliament any action which His Majesty may propose to take. Such action shall be by an Order in Council which must be in terms approved by both Houses of Parliament.

Further His Majesty in Council may at any time by an Order in Council make an amendment in respect of the matters specified above and place it before Parliament with the views of the Government and the Legislatures in India and those of any minorities affected thereby. The amendment shall take effect if approved by Parliament.

THE PROVINCES

The Provinces which shall form the units of the Federation are called Governor's Provinces and are at present eleven in number, *viz.*, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind.

THE EXECUTIVE

At the head of each Governor's Province is a Governor appointed by His Majesty by a Commission under the Royal Sign Manual, usually for a period of five years. His salary ranges from

Governor:	Ap-	Commission under the Royal Sign Manual, usually for a period of five years. His salary ranges from
pointment	and	
Salary	.	

Rs. 1,20,000 to Rs. 66,000 per annum; according to the importance of the province. He is granted suitable allowances to enable him to discharge conveniently and with dignity the duties of his office.

The Governor is not the mere representative of the King and the nominal head of the Province acting on the advice of his Cabinet as in the States of Australia. His wide powers He is invested under the Constitution Act with wide and important executive and legislative powers. His authority extends to matters with respect to which the Legislature of the Province has power to make laws. He appoints his own secretarial staff in his discretion to discharge his various functions.

In each Province there is a Council of ministers to aid and advise the Governor in the exercise of his powers. The ministers are chosen and summoned by him in his discretion and hold office during his pleasure. Ministers must be members of the Legislature, though not necessarily at the time of their appointment. Their salaries shall be fixed by the Provincial Legislature and may not be varied during their tenure of office. All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor. Orders and other instruments of the Provincial Government shall be authenticated according to rules made by the Governor. The Governor may allocate

different departments among ministers. He has the power to ask all information with respect to the business of the entire Provincial Government and to authorise the appropriate secretary to bring to the notice of the Governor any matter involving any of the Governor's special responsibilities.

The special responsibilities of the Governor are:—

Governor's Special Responsibilities	the prevention of any grave menace to the peace and tranquillity of the province or any part thereof; the safeguarding of the legitimate interests of minorities; the securing of the due rights of the members of the public services and their dependants, and the safeguarding of their legitimate interests; the prevention of discrimination detrimental to British Subjects or British Business interests; the securing of the peace and good government of partially excluded areas; the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and the securing of the execution of orders or directions lawfully issued to him by the Governor-General in his discretion.
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Besides these special responsibilities, the Governor shall act in his discretion in the following matters:—the combating of terrorist and revolutionary activities, choice of ministers, presiding at meetings of the Council of Ministers, disclosure of secret sources of information, and the deciding of any question as to whe-

Governor's other Executive Functions	ing matters:—the combating of terrorist and revolutionary activities, choice of ministers, presiding at meetings of the Council of Ministers, disclosure of secret sources of information, and the deciding of any question as to whe-
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ther in any matter the Governor is to act in his discretion or has to exercise his individual judgment.¹

The Governor shall appoint the Advocate-General for the Province. He shall exercise his individual judgment in appointing or dismissing, and in fixing the remuneration of, the Advocate-General. In the making of rules, regulations or orders relating to the organisation or discipline of any police force, civil or military, the Governor shall exercise his individual judgment.

When the Legislature is not in session, the Governor may promulgate ordinances which shall have the same force as an Act of Legislature. Such ordinances shall be laid before the Legislature and shall cease to operate on the expiration of six weeks from the assembling of the Legislature.

The Governor shall have power to promulgate ordinances in respect of urgent matters in which he has to act in his discretion or to exercise his individual judgment. Such ordinances require the consent of the Governor-General and shall be operative for not more than six months.

In cases where the Governor thinks legislation necessary he may send a message to the Chamber or

¹ To act 'in his discretion' means that his authority is outside the ministerial sphere. He may or may not receive ministerial advice. 'To exercise his individual judgment' means that though the ministry has the constitutional right to tender him advice, he has the right to dissent.

Chambers of the Legislature explaining why he wants such a legislation, and may either enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary or attach to his message a draft of the Bill which he considers necessary.

In the latter case, he may, after the expiration of one month enact the Bill proposed by him after considering the address and amendments presented to him by the Chambers with reference to the Bill. A Governor's Act shall have the same force and effect as an Act of the Provincial Legislature. It requires the consent of the Governor-General and shall forthwith be communicated to the Secretary of State to be laid before each House of Parliament.

In case of failure of Constitutional machinery the Governor, with the concurrence of the Governor-General, may suspend the Provincial Constitution by issuing a Proclamation. The Proclamation must state the functions to be exercised by him in his discretion. Every such Proclamation shall be communicated forthwith to the Secretary of State to be laid before each House of Parliament and shall not be operative at the expiration of six months. If Parliament pass a resolution approving the continuance in force of such a Proclamation it shall remain in force for a further period of twelve months up to a maximum of three years. If the Governor enact laws during the period of Proclamation they shall re-

main in force for the maximum period of two years from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the proper Legislature. The Governor may revoke or vary a proclamation by a fresh one.

THE PROVINCIAL LEGISLATURE

There shall, for every Province, be a Provincial
Composition Legislature consisting of the Governor,
and two Chambers in the Provinces of
Madras, Bombay, Bengal, the United Provinces, Bihar
and Assam, and one Chamber in all other Provinces.
The two Chambers of a Provincial Legislature are known
respectively as the Legislative Council and the Legis-
lative Assembly. Where there is only one Chamber, it
shall be called the Legislative Assembly.

The composition of these Chambers varies according to the population and importance of the Province. The maximum strength of the Madras Legislative Council is 56 of which not more than ten are to be nominated by the Governor. In addition to general seats provision has been made for separate constituencies for the Muhammadan, European and Indian Christian Communities. The property qualification of voters is very high, and the electorate is therefore a small one. In Bengal and Bihar, a large number of seats are filled by indirect election, while in Madras, Bombay, the United Provinces and Assam all seats open to election are filled by direct election by primary voters.

The strength of the Provincial Legislative Assemblies also varies from Province to Province. Bengal has 250 members, while the North-West Frontier Province has only 50. Franchise is based on residence, and property or income, or ability to read and write. Women possessing the prescribed qualifications are given the right to vote. All elections are direct, except those of the representatives of special interests, such as Industry, Commerce, Landed Classes and Labour. Seats are reserved for scheduled castes and for women. Provision is made for communal electorates in the case of Muhammadans, Anglo-Indians, Europeans and Indian-Christians. For membership of the Legislative Council the minimum age is 30, and for the Legislative Assembly 25. The tenure of membership is 9 years and 5 years respectively.

A Bill other than a financial one may be introduced in either Chamber of the Provincial Legislature. It shall be deemed to have been passed when agreed to by both Chambers, either without amendment or with such amendments as are agreed to by both. A Bill pending in the Legislative Council shall not lapse on a dissolution of the Legislative Assembly if it has not been passed by the Assembly. A Bill pending in the Assembly, or pending in the Council after it has been passed by the Assembly, shall lapse on a dissolution of the Assembly. If a Bill passed by the Assembly is not presented to the Governor for his assent within twelve

months from its reception by the Council, a joint sitting of the Chambers may be convened by the Governor. If the Bill, however, relates to finance or affects the discharge of any of the Governor's special responsibilities, a joint sitting may be summoned even though the period of twelve months has not elapsed; in this case the Governor is not bound to consult his ministers or abide by their advice. The Bill shall be deemed to have been passed by both Chambers, if at a joint sitting the Bill, with such amendments as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting. A Bill passed by the Council and rejected by the Assembly is not to be referred to a joint sitting. These provisions apply only to those Provinces wherein the Legislature is composed of two Chambers.

A Bill that has been passed by the Provincial Legislature shall be presented to the Governor. The Governor may give his assent to it, or he may return it to the Chambers for reconsideration in which case the Legislature shall take into consideration the amendments proposed by the Governor. The Governor may reserve a Bill for the consideration of the Governor-General or for the assent of His Majesty. A Bill assented to by the Governor or the Governor-General may be disallowed by His Majesty within one year from the date of such assent.

The annual financial statement of the Province Budget grants shall be laid before the Provincial Legislature. It shall include estimated receipts and expenditure. Estimates of expenditure charged on the revenues of the Province can be discussed, but not voted upon by the Legislature. The rest of the estimates shall be submitted to the votes of the Legislative Assembly (the Legislative Council having nothing to do with money grants). The Legislative Assembly may sanction the demands or reject them or reduce them.

If the Assembly refuse or reduce the grant asked by the Governor under any head and if the Governor thinks that the discharge of any of his special responsibilities will be affected thereby, he may authorise the expenditure by certification. Provision shall be made for the education of Europeans and Anglo-Indians in each Province. The amount provided in the annual budget for this purpose shall not be curtailed except by a three-fourths majority in the Assembly.

THE JUDICIARY IN THE PROVINCES

In every Province a High Court is the highest Court of justice. Each High Court shall be a Court of record, and shall consist of the Chief Justice and other judges whom His Majesty may from time to time deem it necessary to appoint. Every Judge of the High Court shall be appointed by His Majesty and shall hold office until he attains the age of sixty. He may not be re-

moved from office except on the ground of misbehaviour or of infirmity of mind or body, and except on a report from the Judicial Committee of the Privy Council. The salaries and allowances shall be fixed by His Majesty in Council, and shall not be increased or reduced during the tenure of office of a Judge. Temporary appointments of any Acting Chief Justice and Judges can be made by the Governor-General in his discretion. Additional judges may also be appointed by the Governor-General in his discretion for a period not longer than two years.

Every High Court shall have superintendence over all courts in India subject to its appellate jurisdiction and has power to call for returns, to make rules and prescribe forms for regulating the practice and proceedings of such courts, to prescribe forms for keeping books, entries and accounts for the officers of such courts, and to settle tables of fees for the sheriff, attorneys and clerks and officers of courts. This superintendence does not include the power to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

If a High Court is satisfied that a case pending in an inferior court, which it has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power. An application for the purposes of this section shall not be made except, in relation to a Federal Act, by the Advocate-General for the Federa-

tion and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

No High Court shall have any original jurisdiction in any matter concerning the revenue until otherwise provided by Act of the appropriate Legislature.

The administrative expenses of a High Court shall be charged upon the revenues of the Province. Fees or other moneys taken by the Court shall form part of those revenues.

There is no distinction between the Executive and the Judiciary in the Provinces. The High Court exercises no control over the appointment, transfer, or promotion of District Judges, and Magistrates of all ranks.

CONCLUSION

The framers of the Constitution Act claim to have granted autonomy to the Provinces. But this Provincial autonomy can in no sense be equated with Responsible Government. No doubt certain features of Parliamentary Government do exist. Ministers are chosen from the members of the Legislature. Officials are not allowed to sit in either Chamber. The Legislative Assembly is a wholly elected body and it is to this house that all votable items of Provincial expenditure are to be submitted. The Legislative Council (the Upper Chamber) is a small body and its powers

are strictly limited. It is laid down in the Act that the function of the ministers is to aid and advise the Governor; and the latter has no other statutory advisers or any spokesman of his own in the Assembly except the Advocate-General.

But the essence of Parliamentary Government, *vis.*, the responsibility of the Executive to the Legislature is absent as the over-riding powers of the Governor are so wide that a zealous ministry is likely to be confronted with interference of one kind or another. The distrust of the Legislature is patent. The Executive has been purposely strengthened and rendered independent of the Legislature. What with his special responsibilities, his large powers to act in his discretion, to exercise his individual judgment or to issue Ordinances and Proclamations, the Governor seems to be more the autocratic ruler of the Province than its constitutional head. The ambit of ministerial authority is so carefully circumscribed that it would be a mockery to call the administration a fully responsible one. It is true that the success of a constitution depends not on the letter, but on the spirit with which its provisions are worked. But the Indian Constitution Act has so overweighted the scales in favour of the executive head of the Province, that there is little freedom of action for a popular ministry. The constitution depends for its success largely on the good sense and forbearance of the Governor. The Congress did well in not accepting office without some tacit understanding regarding the interference of the Governor.

THE FEDERAL GOVERNMENT

Federal Executive

The executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General of India. He is appointed by His Majesty by a Commission under the Royal Sign Manual, generally for a period of five years. His salary has been fixed at Rs. 2,50,800 per annum. Suitable allowances have been sanctioned to him to enable him to discharge the duties of his office with dignity. As the Representative of His Majesty he exercises in addition to his functions as the executive head of the Federation, the functions of the Crown in its relations with Indian States.

He exercises the executive authority of the Federation subject to the provisions of the Constitution Act. Such executive authority of the Federation extends to the matters with respect to which the Federal Legislature has power to make laws, the raising in British India of naval, military and air forces and to the governance of His Majesty's Forces borne on the Indian establishment; and the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant usage, sufferance, or otherwise in, and in relation to, the tribal areas.

But the executive authority does not extend to the enlistment of any person in any forces raised in India unless he is either a subject of His Majesty or a native

of India or of territories adjacent to India, nor to the granting of Commissions in any such forces. It is, however, open to His Majesty to delegate to the Governor-General the power of granting Commissions.

Even after accession, the executive authority of the Ruler of a Federated State shall be exercisable in that State with respect to matters within the competence of the Federal Legislature except in cases where a Federal Law has specifically excluded the authority of the Ruler.

There shall be a council of ministers not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions. The ministers shall be chosen and summoned by him and sworn as members of the council and shall hold office during his pleasure. A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall, at the expiration of that period, cease to be a minister. The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General. The salary of a minister shall not be varied during his term of office. The Governor-General in his discretion may preside at meetings of the council of ministers.

The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation	
Appointment of Counsellors-	

and any part of His Majesty's dominions, shall be exercised by him in his discretion and his functions in, or in relation to, the tribal areas shall be similarly exercised. To assist him in the exercise of these functions the Governor-General may appoint Counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council. He has the authority to appoint his financial adviser to assist him by his advice in the discharge of one of his special responsibilities, namely, "the safeguarding of the financial stability and credit of the Federal Government". The financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser and his staff, and the conditions of their service, shall be fixed by the Governor-General in his discretion. The Governor-General shall, before appointing his financial adviser, consult his ministers as to the person to be selected.

The Governor-General shall appoint a person, being a person qualified to be appointed a Judge of the Federal Court, to be Advocate-General for the Federation. The Advocate-General shall hold office during the pleasure of the Governor-General and shall receive such remuneration as the Governor-General may determine. In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

An Instrument of Instructions is to be issued to the Governor-General by His Majesty
Control of the Secretary of State with the approval of the Houses of Parliament. In so far as the Governor-General is required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions as may be given to him by, the Secretary of State. The Secretary of State shall satisfy himself that the directions issued by him are not inconsistent with the Instrument of Instructions.

All executive action of the Federal Government shall be expressed to be taken in the name
Conduct of Business of Federal Government of the Governor-General. The Governor-General has the right to ask all information with respect to the business of the Federal Government and to allocate business among ministers, in his discretion.

The special responsibilities of the Governor-General are the prevention of any grave menace
Governor-General's Special Responsibilities to the peace and tranquillity of India; the safeguarding of the financial stability and credit of the Federal Government; the safeguarding of the due rights and legitimate interests of the members of public services and their dependants; the prevention of discrimination detrimental to British subjects domiciled in, or to Corporations incorporated under the laws of, the United Kingdom or Burma; the prevention of discriminatory or penal treat-

ment of goods of the United Kingdom or Burmese origin imported into India; the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and the prevention of any action on the part of the Federal Government or any other authority which may prejudice or impede the due discharge of the Governor-General's functions in relation to the reserved departments or special responsibilities, or, which the Governor-General has to exercise in his discretion.

In the discharge of his special responsibilities the Governor-General shall exercise his individual judgment. The Governor-General shall appoint in his discretion his own secretarial staff.

The Governor-General may promulgate ordinances in case of urgent necessity when the Federal Legislature is not in session. Such ordinances shall be laid before the Federal Legislature and shall cease to operate after six weeks from the re-assembly of the Legislature, or even before the expiry of that period, if resolutions disapproving them are passed by both the Chambers.

With regard to matters in which he is required to act in his discretion or to exercise his individual judgment he may, at any time, promulgate such ordinances if he thinks it necessary. These ordinances shall expire at the end of six months, but may be extended for a further period not exceeding six months. In the latter

case, the ordinance should be communicated to the Secretary of State to be laid before Parliament.

If the Governor-General thinks legislation necessary with regard to those functions which he has to exercise in his discretion or in his individual judgment, he may, by message to both Chambers, explain the need for such legislation and either enact forthwith a bill containing the necessary provisions or attach to his message a draft of the Bill which he considers necessary. In the latter case, he may, at the expiration of one month, enact the Bill proposed by him after considering the address and amendment presented to him by either Chamber. Such an enactment is called the Governor-General's Act, and shall be forthwith communicated to the Secretary of State to be laid before Parliament. Every ordinance and every Governor-General's Act may be disallowed by His Majesty. The Governor-General may withdraw an ordinance at any time.

The Governor-General shall act in his discretion with respect to the following matters:—the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India; the approval of their salaries and the fixing of their terms of office; the supercession of the Central Board of the Bank and any consequent action; the liquidation of the Bank. In nominating the Directors of the Reserve Bank of India and in removing from office any Director nominated by him, the Governor-General shall exercise his individual judgment.

If the Governor-General is at any time satisfied that the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution Act, he has power by a Proclamation to suspend the Federal Constitution excepting the provisions relating to the Federal Court and assume to himself the powers exercisable by any Federal body. Every such proclamation may be varied or revoked by a subsequent proclamation. The Governor-General shall communicate forthwith every such proclamation to be laid before Parliament. It shall cease to operate at the expiry of six months. If both Houses of Parliament approve, the proclamation will remain in force for a further period of twelve months. If the Federation continues to be governed by Proclamation for three years continuously, the Proclamation shall cease to have effect, and the Constitution Act shall be brought into force with such amendment as Parliament may deem necessary to make.

THE FEDERAL RAILWAY AUTHORITY

A novel feature of the Constitution Act is the provision for the establishment of an independent statutory body to exercise the executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways. This body is called the Federal Railway Authority (hereinafter referred to as the Authority). The Authority has power to carry on,

Failure of Constitutional Machinery

Function

through its own machinery or through arrangements with other persons, such undertakings as are expedient in connection with any Federal Railways, subject to the provisions of any existing laws.

The Authority shall be composed of seven members appointed by the Governor-General, of whom the President and at least two other members shall be appointed by the Governor-General in his discretion. Except for the first appointees, the tenure of office is five years, and a member is eligible for re-appointment for a further term of five years. The salary and allowances of the members shall be fixed by the Governor-General in his individual judgment.

The Authority shall be guided by such instructions on questions of policy as may be given by the Federal Government. The Governor-General in his discretion shall be the final authority to decide whether a question is or is not a question of policy. In regard to matters which the Governor-General administers in his discretion or which involve the Governor-General's special responsibilities requiring him to exercise his individual judgment, the Governor-General may issue to the Authority such directions as he may deem necessary and the Authority shall give effect to any directions so issued.

The Governor-General exercising his individual judgment may make rules for the more convenient

transaction of business arising out of the relations between the Federal Government and the Authority and requiring the Authority and its Chief Executive Officer to bring to the notice of the Governor-General any matter which involves or is likely to involve any special responsibility of the Governor-General.

The Authority shall establish, maintain and control a fund to be known as the "Railway Finance of the Authority Fund". All moneys received on revenue or capital account, or from the Federal revenues, shall be paid into that Fund, and all expenditure shall be defrayed out of that Fund. The Authority may establish and maintain separate provident funds for the benefit of railway employees. Any surpluses on revenue account shall be apportioned between the Federation and the Railway Authority according to a scheme to be prepared by the Federal Government, who shall have power to review the scheme from time to time.

Railway Accounts shall be audited by the Auditor-General of India. The Authority shall publish annual reports of the operations and annual statements of accounts in a form approved by the Auditor-General.

A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General.

The Authority shall have an executive staff, at the head of which shall be a Chief Railway Commissioner appointed by the Governor-General in his individual judgment after consultation with the Authority. He shall be assisted by a financial commissioner appointed by the Governor-General on the recommendation of the Authority and a number of additional commissioners appointed by the Authority on the recommendation of the Chief Railway Commissioner.

The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute as to rates or traffic facilities between persons using or desiring to use a railway and the Authority, which the Governor-General may require the Authority to refer to the Committee.

In order that there may not be any unfair discrimination and uneconomic competition between one railway system and another the Railway Tribunal has been established to investigate all complaints of refusal of mutual facilities and of unfair competition. The Tribunal shall also determine complaints against the Authority and shall have jurisdiction to adjudicate on the proposals for constructing a railway or for altering the alignment or the gauge of a railway about which there has been a difference between the Governor-General and any Federated State or the Authority. Such proposals shall

not be proceeded with save in accordance with the decision of the Tribunal.

The Railway Tribunal shall be composed of a President and two other persons. The
Composition and Functions. President shall be a judge of the Federal

Central Court appointed by the Governor-General in his discretion after consultation with the Chief Justice. The two other persons shall be selected to act in each case by the Governor-General in his discretion, being persons with railway, administrative or business experience. An appeal shall lie to the Federal Court from any decision of the Railway Tribunal, on a question of law, and the decision of the Federal Court shall be final. The Federal Court or the Railway Tribunal, as the case may be, has power to vary or revoke any previous order made by itself. Practice, procedure and fees in relation to the Railway Tribunal shall be regulated by rules made by the President with the approval of the Governor-General in his discretion. No Court shall have any jurisdiction with respect to any matter within the jurisdiction of the Railway Tribunal, the only exception being an appeal to the Federal Court on a question of law. The remuneration to be paid to the members other than the President shall be determined by the Governor-General in his discretion. The administrative expenses of the Railway Tribunal shall be settled by the Governor-General exercising his individual judgment. The administrative expenses including the members' remuneration shall be charged on the Revenues of the Federation.

THE SECRETARY OF STATE AND THE SERVICES IN INDIA

The old Council of the Secretary of State for India is to be dissolved. He shall have a body of advisers not less than three nor more than six in number, the actual number being fixed from time to time by him. One half of them should have served the crown in India for at least ten years. The Secretary of State may, in his discretion, consult his advisers collectively or individually. He may even act independently without such consultation or in spite of their advice. With regard to those matters in which the Act requires the concurrence of his advisers he is bound to call a meeting and act in accordance with the opinion of at least one half of the members present at such a meeting. The salary of the Secretary of State and the expenses of his department shall be paid out of moneys provided by Parliament.

The authority of the Secretary of State under the Government of India Act of 1919 was all-pervasive. In the Constitution Act he has been ostensibly rid of a large number of powers and his authority seems to have shrunk to very small proportions. But this is not really so as will be evident from a careful perusal of the several sections of the Act.

He exercises general control and may issue instructions to the Governor-General in so far as the latter acts in his discretion or exercises his individual judgment. As His power is still wide,

this covers a wide field the Secretary of State's authority is in practice large. He retains all powers in respect of Indian States. The ecclesiastical department, external affairs and defence are controlled by him. He is empowered to make appointments to any service which he may deem necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts. Appointments to the Indian Civil Service, the Indian Medical Service, the Indian Police Service, and the Irrigation Department shall be subject to his authority. He has appellate power in respect of all superior services in India.

The Secretary of State may determine the number and character of civil posts which are to be filled by persons recruited by him.

'Protected' Civil Service

Rules with regard to pay, leave, pensions and rights to medical attendance of all persons appointed to the higher services shall be made by the Secretary of State. He has the power to see that every person recruited by him is justly and equitably dealt with. In brief, the higher services in India have been carefully protected under the Constitution Act against the interference of the Ministry or the Legislature. The Civil Service in India enjoys a status that has not been granted to the services in any other country.

FEDERAL LEGISLATURE

The Federal Legislature shall consist of His Majesty represented by the Governor-General and two Chambers,

the Council of State and the House of Assembly (the Federal Assembly).

The maximum strength of the Council of State shall be 260 made up of 104 state representatives, 150 elected members to represent British India and six members nominated by the Governor-General. Out of the 150 elected members seven Europeans, two Indian Christians, one Anglo-Indian, six members belonging to the scheduled caste and six women are to be chosen by indirect election. The remaining members are to be elected chiefly by direct election and in separate electorates. The franchise is a very restricted one, and the number of voters for the whole of British India may not be more than 150,000. The Council of State is a permanent body not subject to dissolution, one-third of the members retiring in every third year. The tenure of membership is nine years.

The Federal Assembly shall have a maximum strength of 375, of which 250 shall be elected members representing British India. Out of this number 211 are to be elected by separate communal electorates. The large majority of these elections are indirect, *i.e.*, by members of the Provincial Legislative Assemblies. Nine women are to be elected indirectly, *i.e.*, by women members of all the Provincial Legislative Assemblies enrolled in an electoral college. Of these nine seats, two are reserved for Muhammadan women and one for an Indian Christian. 28 members representing special interests such as landholders, labour, commerce and

industry are to be elected according to prescribed rules. Two members representing Coorg and Ajmer, are elected by a joint electorate. The remaining 125 members are to be nominated by the rulers of the Federated States. The tenure of membership is five years.

Any Bill other than a financial Bill may be introduced in either Chamber, and shall be deemed to have been passed only when it has been agreed to by both the Chambers, either without amendment, or with such amendments only as are agreed to by both the Chambers.

The Governor-General may summon a joint sitting of the two Chambers in case of disagreement between the two Chambers as to a Bill or any amendments, or in case more than six months elapse from the date of the reception by either Chamber of a Bill passed by the other without the Bill being presented to the Governor-General for his assent.

The joint sitting shall be held six months after the Governor-General announces his decision to call a joint sitting. In the case of a Bill passed by one Chamber and transmitted to the other, which relates to finance or to any matter connected with the sphere of the Governor-General's discretion or individual judgment, he may in his discretion summon a joint sitting of the two Chambers at any time if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay. And in such a case

the joint sitting may be convened by the Governor-General in his discretion at any date after he announces his decision. The Chambers shall meet on the date so appointed. If at the joint sitting of two Chambers the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed to have been passed by both Chambers.

After a Bill has been passed by the Chambers it shall be presented to the Governor-General. The Governor-General may in his discretion give or refuse his assent in His Majesty's name, or reserve the Bill for his Majesty's assent, or return the Bill to the Chambers for a reconsideration of the whole Bill or specified parts of the Bill or for a consideration of amendments which may be recommended by him. A Bill so returned shall be reconsidered by the Chambers. A Bill reserved for His Majesty's assent can become an Act only after such assent is given and notified. A Bill assented to by the Governor-General becomes an Act, which, however, is liable to be subsequently disallowed by His Majesty within a year from the date of the Governor-General's assent. Such disallowance makes the Act null and void.

If the Governor-General in his discretion certifies that the discussion of any Bill in the Federal Legislature would affect the discharge of his special responsibility in the matter of peace or tranquillity in India, he may direct that no proceedings should be taken and effect shall be given to the direction.

The annual financial statement of the Federation shall be placed before both Chambers of the Federal Legislature. It shall include the estimated receipts and expenditure. The expenditure side shall show separately the sums required to meet expenditure described by the Constitution Act as expenditure charged upon the revenues of the Federation, and the sums required to meet other expenditure proposed to be made from the revenues of the Federation. Expenditure on revenue account shall be distinguished from other expenditure. If there are sums included solely because the Governor-General has directed that they are necessary for the due discharge of his special responsibilities, they shall also be separately indicated.

The following shall be expenditure charged upon the revenues of the Federation:—

the salary and allowances of the Governor-General and other expenditure relating to his office;

debt charges for which the Federation is liable;

the salaries and allowances of ministers, of counsellors, of the financial adviser, of the Advocate-General, of Chief Commissioners, and of the staff of the financial adviser;

the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

expenditure with respect to defence and ecclesiastical affairs, external affairs;

the sums payable to His Majesty under the Constitution Act out of the revenues of the Federation in respect of the expense incurred in discharging the functions of the Crown in its relations with Indian States;

any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;

any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal; and

any other expenditure declared by the Constitution Act or any Acts of the Federal Legislature to be so charged.

Any question whether any proposed expenditure is expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

Estimates of expenditure charged upon the revenues of the Federation can only be discussed by the Legislature, but are not to be submitted to their vote. The first six items cannot even be discussed. The rest of the estimates shall be submitted to both Chambers who will be entitled to grant or refuse or reduce the amount asked. A demand for grant rejected by the Assembly cannot be submitted to the Council of State except on a direction of the Governor-General. When a grant demanded is reduced by the Assembly, only the reduced amount is to be submitted to the vote of the Council unless the Governor-General directs otherwise. In no case, however, can a demand be placed before the Council for a greater amount than originally submitted to the Assembly.

If the Chambers differ with respect to any demand, the Governor-General shall summon a joint sitting of the two Chambers. The decision of the majority of members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

If in the opinion of the Governor-General the refusal or reduction by the Chambers of the amount asked by him would affect the due discharge of any of his special responsibilities he has the power to authorise the expenditure of such additional amount not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary for the due discharge of that responsibility.

If expenditure becomes necessary in any financial year which is not covered by the annual Budget, the Governor-General has power to ask for supplementary grants, in respect of which the procedure to be followed is the same as in respect of the annual Budget.

A Bill making provision for imposing or increasing any tax and for regulating the borrowing of money and any previous or future financial obligations shall not be introduced except on the recommendation of the Governor-General. Such a bill may be introduced only in the Lower Chamber.

There shall be an Auditor-General of India to audit the accounts of the Federation and, until an Auditor-General is appointed for any Province, of each Province. He shall be appointed by His Majesty and his salary and

Audit and Ac-
counts

conditions of service shall be fixed by His Majesty in Council. He shall not be eligible for any office under the Crown in India after he has ceased to hold his office. His salary, allowances and pension shall be charged on the revenues of the Federation. He may be removed from his office only by His Majesty on the recommendation of the Judicial Committee of the Privy Council for misbehaviour or infirmity of mind or body. The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor-General to be laid before the Federal Legislature.

There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion whose business will be to look into the transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority or of any Province. His pay, allowances and pension shall be charged on the revenues of the Federation. He can be removed from office only in the same way as the Auditor-General of India. He shall be subject to the general superintendence of the Auditor-General of India.

To sum up, the Constitution Act has exalted the Executive so far above the Legislature that there can be no responsibility at the Centre. The matters left to the

discretion or the individual judgment of the Governor-General are too many and of too great importance. Defence, ecclesiastical affairs and external relations are under his control. Law and order, financial stability and credit, the safeguarding of the interests of minorities and the rights of the Indian States are some of his special responsibilities. In the management of these affairs, he is assisted by three Counsellors who are not responsible to the Legislature. The Financial Adviser is a nominee of the Governor-General. The Council of Ministers has therefore little power to influence the decisions of the Governor-General in such important matters as finance, law and order, defence, and foreign relations. There is no statutory provision for the collective responsibility of the ministry.

The Federal Legislature has no real power. It has little control over the purse. The non-votable items of the budget amount approximately to seventy-five per cent. of the expenditure of the Central Government, and the Governor-General in his discretion may decide whether a disputed item is non-votable or not. He is also authorised to restore a grant in respect of his special responsibilities even though rejected by the Legislature. His previous recommendation is necessary for the Federal Legislature to take into consideration any Bill dealing with taxation, expenditure, or borrowing. He has power to issue ordinances and to

suspend the constitutional machinery by proclamation. The management of the railways has been kept out of the reach of the Federal Assembly. All this has provided sufficient authoritative basis for the widespread opinion in India that the Act has been skilfully drafted to thwart the legitimate ambition of her people for Responsible Government and to put off indefinitely the grant of Dominion Status to the country.

THE FEDERAL COURT

The most satisfactory feature of the Constitution Act is the Federal Judiciary. The framers of the Act should have been evidently alive to the great need in a Federation for an independent and impartial tribunal to decide questions of conflicts of jurisdiction and authority between the Federal Government and the constituent units. The Federal Court has therefore been placed beyond the ambit of power of every other branch of the Federal Government. Its inviolability and prestige have been jealously guarded. Its jurisdiction may not be curtailed except by Parliament. Even the Governor-General who may, by proclamation, suspend other federal authorities during times of crisis shall not interfere with the Federal Court.

The Federal Court shall be composed of a Chief
Composition Justice of India and not more than six
puisne judges. This strength may be
increased on an address being presented by the Federal
Legislature to His Majesty through the Governor-
General. A Federal judge shall be appointed by His

Majesty and hold office till the completion of his sixty-fifth year. He may be removed from his office only by His Majesty on the report of the Judicial Committee of the Privy Council for misbehaviour or for infirmity of mind or body. The appointment of an acting Chief Justice shall be made by the Governor-General in his discretion from among the judges of the Federal Court. The salaries and allowances of the federal judges, their leave and pensions shall be determined by His Majesty in Council.

The Federal Court shall be a Court of Record and shall sit in Delhi and such other places as the Chief Justice with the Governor-General's approval may from time to time fix. The Federal Court shall have exclusive original jurisdiction in any dispute, if and in so far as it involves any question on which the existence or the extent of a legal right depends, between any two or more of the following parties:—

- Original Jurisdiction
- the Federation;
- any of the Provinces; and
- any of the Federal States.

The original jurisdiction of the Federal Court shall not extend to a dispute to which a State is a party unless the dispute concerns the interpretation of the Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or arises under an agreement made in relation to the

administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State, or arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute.

The original jurisdiction shall not extend to a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute. The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment, other than a declaratory judgment.

The Federal Court shall have appellate jurisdiction in respect of High Courts in British India in any case, in respect of which the High Court concerned certifies that the case involves a substantial question of law as to the interpretation of the Constitution Act or any Order in Council made thereunder. In no such case can a direct appeal lie to the Privy Council from a judgment of a High Court in British India, with or without special leave.

An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided being a question

which concerns the interpretation of the Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made in relation to the administration in that State of the law of the Federal Legislature.

The Federal Court shall, where it allows an appeal, remit the case to the Court from which the appeal was brought with a declaration of its decision and the Court concerned shall give effect to the decision of the Federal Court. The Federal Court has power to order a stay of execution in any case under appeal to the Federal Court and execution shall be stayed accordingly. All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

An appeal may be brought to His Majesty in Council as of right from any judgment of the
Appeal to the Privy Council Federal Court in the exercise of its original jurisdiction in any dispute which concerns the interpretation of the Constitution Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made in relation to the administration of a Federal Law in any State. In any other case, an appeal may be brought to His Majesty in Council from a decision of the Federal Court by leave of the Federal Court or of His Majesty in Council.

Whenever the Governor-General thinks that it is expedient to obtain the opinion of the Federal Court on a question of law, he may, in his discretion, refer the question to that Court and the Court may, after such hearing as they think fit, report to the Governor-General thereon.

PARTIES

The Indian National Congress is the oldest and most important political party in the country. It admits into its ranks every one who subscribes to its creed. Its goal is the attainment of Swaraj by all legitimate and peaceful means. It is intensely nationalistic in its aims. It is the one party whose organisations are in close touch with the people. Its policy and measures have been the cause of a tremendous mass awakening.

The Congress party has been organised on up-to-date lines within the last twenty years. The Working Committee, as the Congress Executive is called, is an extremely efficient body. It enforces strict discipline among the rank and file. The sweeping victory the party gained in the recent elections was due to the loyalty of its members and the excellence of its propaganda, no less than to sagacious leadership.

Next in importance, is the Muslim League. It is avowedly a communal party. Its aim is to promote the interests of the Muhammadans. Admission is naturally restricted to those who profess the Moslim faith. The party's importance is out of all proportion to its numeri-

cal strength, especially in the Central Legislature. But the narrow particularism of the leaders does not find general acceptance and the hold of the League on the community seems to be weakening. Muhammadans with Congress leanings are increasing in numbers.

The Non-Brahmin party (also called the Justice party) cannot claim to be a national party. Its organisation and activities have been confined mostly to the Madras Province. The attempt made a few years ago to develop it into an All-India party proved a failure. Though its original aim was the uplift of the masses, the lure of office proved too great and the party soon became communal and sectional in its policy. During its pretty long spell of office, it allied itself with the landed aristocracy and concerned itself more with the distribution of the loaves and fishes of administration than with vital problems touching the people. It thus missed a great opportunity and lost its hold when the Congress party decided to contest the elections.

The Liberals are the 'Adullamites' of Indian politics. They once belonged to the Congress, but seceded from it owing to sharp differences with the 'extremists'. The party still counts among its members some of the ablest and best-known politicians of India. But these are leaders without a following.

The Liberals have an organisation in each of the Provincial Capitals and an All-India organisation in the Liberal Federation which holds its annual sessions regularly. But its policy is too moderate and the utterances

of its leaders too halting to satisfy the aspirations of Young India.

The Socialist party is the left wing of the Congress. It has an international outlook in politics. But its main aim is the economic organisation of the country based on the liquidation of capitalism and the enthronement of labour. Its number is small, but its influence seems to be on the increase.

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